

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

TRANSCRIPT OF PROCEEDINGS

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:
DAVID M. DAUGHERTY, : CIVIL ACTION
:
Plaintiff, : NO. 5:14-CV-24506
:
vs. :
:
OCWEN LOAN SERVICING, LLC, : May 16, 2016
:
Defendant. :
:
-----x

TRIAL
VOLUME I

BEFORE THE HONORABLE IRENE C. BERGER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. RALPH C. YOUNG
MR. JED ROBERT NOLAN
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P R O C E E D I N G S

THE COURT: Ladies and gentlemen, you have, of course, been selected as jurors and have taken an oath to well and truly try this case. And as I've indicated, I expect the case to last four days.

During the trial the Court will take breaks called recesses, as you saw earlier. During those times, you must not talk about this case among yourselves or with anyone else.

Further, you are instructed not to permit anyone to discuss the case in your presence. This instruction goes to your families and friends as well. It's your sole and exclusive responsibility in the case to decide the case solely on the law and the evidence without help and assistance from persons other than your fellow jurors.

You'll find yourself together in the jury room in the mornings before trial, in the afternoon after the luncheon recess, and at various other times. Even though you are all together, you're not to discuss the case until you have heard all of the evidence and the instructions on the law that I will give to you and until after you have been released to deliberate your verdict.

Further, you are instructed not to conduct any independent investigation or research the facts and circumstances of the case or research the law related to the

1 case. Nor are you to use a dictionary, computer, or other
2 reference materials including but not limited to Bing,
3 Google, or any other research tool to define terms or gain
4 knowledge about issues or people, including the lawyers,
5 which you hear about during the course of the trial.

6 You may not communicate with anyone about the case on
7 your cell phone, through e-mail, BlackBerry, iPhone, text
8 messaging or on Twitter, through any blog or website,
9 through any internet chat room or by way of any other social
10 networking websites including, again, but not limited to
11 Facebook, Myspace, LinkedIn, and YouTube.

12 You will have access to notepads. Feel free to take
13 notes during the trial. At the end of each day you should
14 leave your notepads in the jury room which will be locked
15 during the evening.

16 At the conclusion of the trial you will leave your
17 notes in the jury room and I will personally ensure that
18 they are shredded. You're instructed not to take any
19 photographs or videos with your cell phones of fellow jurors
20 or of any part of the court proceedings.

21 During the trial do not talk to the plaintiff or a
22 representative of the defendant, their lawyers, any of the
23 witnesses, or anyone that you see observing the trial.

24 In fact, if you see any of the parties seated at
25 counsel table on the elevator or outside on the sidewalk and

1 say "good morning" or "good afternoon" to them, they are
2 likely to shy away from you ladies and gentlemen of the
3 jury.

4 That's not intended as any arrogance or unfriendliness
5 on their parts. They're simply trying to keep my
6 instruction that they stay clear of you ladies and gentlemen
7 of the jury.

8 If anyone tries to talk to you about any of the matters
9 under consideration in this trial, you should immediately
10 report that to the court security officer or to me.

11 There will be people meeting in other rooms while you
12 are in the jury room. So be sure to keep the jury room door
13 closed whenever possible. If you hear anything about the
14 case, be sure to let me know.

15 It's a judge's responsibility to preside over a trial
16 impartially and without favor to either side. So while
17 judges may exhibit certain attitudes or may make rulings for
18 one side or another in any given situation, you should not
19 take this in any way as any indication that the Judge wishes
20 you to reach a certain result in the case. You should keep
21 an open mind. You should not form or express a final
22 opinion on any issue during the course of the trial.

23 You should keep from reaching a conclusion on the case
24 until you have heard all of the evidence, the arguments of
25 the attorneys, and the final instructions on the law that I

1 will give to you after you have heard all of the evidence.

2 You must not permit yourself to be influenced by
3 sympathy, bias, passion, or favor as to either party.
4 Remember, you have a duty to discuss the case with your
5 fellow jurors during deliberations prior to reaching a
6 conclusion on the case.

7 In a civil case such as this the plaintiff has the
8 burden of proving each and every element of the case by a
9 preponderance of the evidence. To prove by a preponderance
10 of the evidence means to prove that something is more likely
11 so than not so.

12 Now I will instruct you on how to view some of the
13 events that are likely to occur during the trial.

14 Initially the attorneys will have an opportunity to
15 make opening statements. Counsel for the plaintiff will
16 make an opening statement first. Then counsel for the
17 defendant may, but does not have to, make an opening
18 statement.

19 These statements should be considered only as a preview
20 of what the attorneys expect the evidence in the case to be.
21 The opening statements themselves are not evidence.

22 Next, witnesses will be called to testify. You will --
23 or they will be placed under oath and questioned by the
24 attorneys.

25 First, counsel for the plaintiff will present witnesses

1 through direct examination and counsel for the defendant can
2 cross-examine them if there is cross-examination. Then
3 counsel for the plaintiff will have an opportunity to
4 redirect the witness and that will conclude the testimony of
5 that particular witness.

6 At the conclusion of the plaintiff's case, counsel for
7 the defendant may, but is not required to, call witnesses.
8 Counsel for the plaintiff will have the opportunity to
9 cross-examine those witnesses. If that occurs, counsel for
10 the defendant will conduct redirect examination if he or she
11 chooses, and that will be the conclusion of the witness's
12 testimony.

13 You will determine the credit and weight you will give
14 to the testimony of each witness. In doing this, you can
15 consider his or her good memory or lack of memory; his or
16 her interest or lack of interest in the outcome of the
17 trial; the intelligence or lack of intelligence of the
18 witness; his or her demeanor and manner of testifying; his
19 or her opportunity and means or lack of opportunity and
20 means of having knowledge concerning the matters which he or
21 she testify; the bias, prejudice, hostility, friendliness or
22 unfriendliness of the witness for or against any of the
23 parties; the relationship of any witness to any of the
24 parties or other witnesses; the reasonableness or
25 unreasonableness of the witness's testimony; and his or her

1 apparent fairness or lack of fairness.

2 At times witnesses may appear by deposition testimony
3 read to you from a written transcript or shown by videotape
4 recording consisting of answers under oath to questions
5 asked of the witness in advance of the trial in the presence
6 of a court reporter.

7 These depositions are taken out of the presence of the
8 Court. The testimony of a witness who for some reason
9 cannot be physically present to testify from the witness
10 stand is entitled to the same consideration and is to be
11 judged as to credibility and weight as if the individual had
12 been present and had testified here from the witness stand.

13 Also, during the trial I might receive documents and
14 other exhibits as evidence. If evidence is given to you to
15 examine, you should examine it carefully without comment and
16 remember that you will have another opportunity to examine
17 the evidence during the course of your deliberations.

18 You should also know, ladies and gentlemen, that it is
19 an attorney's right and duty to object when testimony or
20 other evidence is being offered that the attorney believes
21 should not be admitted into evidence.

22 When I decide that an objection is correct, I will
23 sustain it and you should act as if you never saw the
24 evidence or heard the attorney's question or the witness's
25 answer if one is given.

1 There also may be times when I will strike evidence
2 from the record. You should act as if this evidence never
3 existed. However, if I decide that an objection is not
4 correct, I will overrule it and you should give that
5 evidence no more or less weight than if the objection had
6 not been made.

7 Sometimes an attorney will request a bench conference
8 to -- or a recess to discuss an objection. That's not
9 intended to hide or conceal anything from you jurors, but it
10 is to -- is designed to ensure that only legally admissible
11 evidence comes in in your presence.

12 There may be times that I will refuse a bench
13 conference or a recess. You should give no consideration or
14 draw no inference from that whatsoever.

15 Finally, the attorneys will make closing arguments.
16 These arguments, like opening statements, are not evidence.
17 The attorneys at this time are permitted to summarize the
18 evidence and the law and try to persuade you to decide on a
19 particular verdict.

20 You may accept or reject these arguments as you see
21 fit. If any argument, statement, or remark of counsel is
22 not consistent with the evidence or with my instructions on
23 the law, then you should disregard that argument, statement,
24 or remark.

25 In conclusion, do not read any newspaper accounts,

1 listen to any radio, view or listen to any television or
2 internet coverage of the trial, or make contact with any
3 media personnel during the course of the trial.

4 You are instructed to completely disregard such
5 information and decide the issues solely on the basis of the
6 facts and law presented to you here in the courtroom.

7 To help ensure that your decision is based only on the
8 law and the facts, the jury room door should remain closed
9 at all times.

10 For your planning, ladies and gentlemen, we will try to
11 begin court around 9:00 in the morning and conclude around
12 5:00 in the evening.

13 If at any time during the course of the trial you
14 become tired or you have difficulty seeing or hearing or you
15 experience any discomfort whatsoever and you feel it
16 necessary to take a break, please raise your hand and I will
17 be happy to accommodate you at any time. Even if we have
18 just taken a break and you need one, please do not hesitate
19 to raise your hand.

20 Will the plaintiff go forward with opening statement?

21 MR. YOUNG: Thank you, Your Honor.

22 THE COURT: Mr. Young.

23 MR. MANNING: Your Honor, may we have a brief
24 sidebar before that begins?

25 THE COURT: Yes, sir.

1 (Bench conference on the record)

2 THE COURT: Mr. Manning.

3 MR. MANNING: Thank you. I'm not sure whether
4 there are going to be demonstratives used during the
5 opening, but we have a couple of evidentiary issues which
6 have already been briefed.

7 Really the two that I want to highlight for Your
8 Honor's attention are -- they're both under 26(e). 26(e)(1)
9 requires that any 26(a)(3) disclosures of exhibits be
10 on-goingly [sic] updated.

11 THE COURT: Can I interrupt you for just a second?
12 Do you all intend to use demonstrative exhibits during
13 your opening?

14 MR. YOUNG: No, Your Honor. I have a timeline
15 that I'm going to lay out right in front of the jury bar
16 where they can't see it. I'm going to refer to it, but they
17 won't be able to see it.

18 THE COURT: All right. Are you going to be
19 referring specifically to the documents that Mr. Manning is
20 referring to that's the subject of his evidentiary motion?

21 MR. YOUNG: I will be referring to ACDVs,
22 Automated Consumer Dispute Verifications.

23 THE COURT: All right.

24 MR. MANNING: Which are the Equifax documents.

25 THE COURT: Yes. There are -- I'm sorry. Go

1 ahead, Mr. Manning.

2 MR. MANNING: Thank you, Judge. And there have
3 been no amended 26(a)(3)s, no supplemented 26(a)(3)s. And
4 26(e)(1) says it's an on-going obligation and you have to
5 disclose it and they haven't been.

6 The second issue related to that is expert testimony.
7 It's -- again, I'm not sure what the timeline is going to
8 show. But to the extent they seek to get something in
9 through an expert witness, there's also an on-going
10 obligation to supplement a 26(a)(2) disclosure. And that's
11 26(e)(2).

12 And it says you have to -- you're constrained to the
13 disclosed opinion. And in this case, their expert has very
14 little disclosed opinions, specifically nothing pertaining
15 to causation or damages and no details regarding any
16 documents.

17 So to the extent that they want to seek to offer
18 testimony or argument based on the expert, they have to be
19 limited to that expert report. And the --

20 THE COURT: I think they understand that. I'm not
21 going to allow opinions that have not been disclosed, which
22 seems to me what you're asking for, Mr. Manning.

23 MR. MANNING: Yes, Judge.

24 THE COURT: Any intention of offering opinions
25 that have not previously been disclosed, Mr. Young,

1 Mr. Nolan?

2 MR. YOUNG: No, Your Honor. I doubt if I even
3 make any reference to the expert.

4 THE COURT: All right. That takes that issue off
5 the table, Mr. Manning. Go ahead, please.

6 MR. MANNING: So to the extent that the plaintiff
7 intends to refer in any way in timeline format or a summary
8 to evidence that is based on Equifax documents, the
9 documents that were not disclosed on a 26(a)(3), then that
10 would be inadmissible and potentially reversible error for
11 the jury to hear it.

12 I know that Your Honor could seek to cure it by
13 instructing them to disregard, but it's difficult to unring
14 the bell. And I just wanted to -- having not seen what he
15 intends to offer, I just wanted to raise that issue with
16 Your Honor beforehand.

17 THE COURT: All right.

18 Mr. Young.

19 MR. YOUNG: Your Honor, I intend to outline my
20 case including what was demonstrated by the Equifax reports.
21 I'm not sure what counsel's objection is with respect to
22 disclosure. Those documents were exchanged. They were set
23 forth in our list of exhibits. And we took a records
24 authentication deposition last week which at some point, if
25 necessary, I will read that portion of the deposition to the

1 jury where those records are authenticated.

2 THE COURT: As I understand the outstanding
3 motion, we'll get to that -- regarding the admissibility of
4 those documents based on hearsay in addition to the
5 authentication issue, we'll get to that at a particular
6 time.

7 Is there a way in your timeline so that you are able to
8 do justice to your client to refer to these documents,
9 Mr. Young, in a general as opposed to a very specific way?

10 MR. YOUNG: My reference will be that there were
11 periodic ACDVs received by Ocwen to which Ocwen responded.
12 And I characterize it as -- there's 24 of them that came in
13 sets of two. And I characterize them as confirming the loan
14 is current in one ACDV and confirming that the loan is in
15 foreclosure in the other ACDV. That's the, to the extent,
16 the depth I intend to go.

17 THE COURT: All right. Mr. Manning.

18 MR. MANNING: That's exactly what's at issue here.
19 That's based on Equifax documents.

20 THE COURT: Uh-huh.

21 MR. MANNING: I have the 26(a)(3)s printed out if
22 you want to look at them, but there's no reference to those
23 documents as exhibits for this trial.

24 What Mr. Young is referring to as having been disclosed
25 is last week when we did the authenticity deposition.

1 THE COURT: Uh-huh.

2 MR. MANNING: It's not on a 26(a)(3). It was
3 never amended. It was never supplemented. And 26(e)(1) is
4 very clear you have to do that or it's not admissible.

5 And then second, Your Honor had a scheduling order and
6 I think it was from October, 2014. It was ECF 12. I
7 remember that. In Paragraph 2 of your order in all caps, in
8 all bold you said, "To the extent it's not disclosed on
9 time, it will be excluded."

10 THE COURT: Uh-huh, if there's an objection.

11 This is what we're going to do so that we get past this
12 juncture, gentlemen. I've instructed the jury, and I'll
13 preserve the defendant's objection, that these opening
14 statements are not evidence.

15 I'm going to permit you to do your opening and, to some
16 extent, Mr. Young, at your own peril because I will rule on
17 the admissibility of these documents as we go forward. So I
18 say at your own peril in terms of promising the jury
19 something that you may not be able to look -- to deliver, of
20 course, depending on my rulings.

21 I'm going to preserve your objection and exception to
22 my allowing them to go forth with mentioning, as he has
23 stated here, in their opening.

24 But then, gentlemen, I will rule on the admissibility
25 of those documents as we go forward as has been raised based

1 on disclosure, and as I understand the more recent document
2 that I've read also that they do not comply with an
3 exception to the hearsay rule.

4 I preserve your objection and exception to my allowing
5 them to go forward in opening statement.

6 MR. MANNING: Thank you, Judge.

7 THE COURT: Anything further?

8 MR. YOUNG: No. Thank you, Your Honor.

9 THE COURT: All right. Thank you both.

10 (Bench conference concluded)

11 THE COURT: Mr. Young.

12 MR. YOUNG: Yes, Your Honor.

13 THE COURT: Are you ready to go forward?

14 MR. YOUNG: I am, Your Honor.

15 May it please the Court, --

16 THE COURT: Yes, sir.

17 MR. YOUNG: -- counsel, members of the jury, I'm
18 Ralph Young. I've been practicing law here in the Raleigh
19 County area for many, many years. And Mr. Nolan and I have
20 the privilege of representing Mr. Daugherty in a claim
21 against his mortgage company for falsely or incorrectly
22 reporting his current mortgage as being both current and in
23 foreclosure simultaneously.

24 Credit reporting is at the center of this case. And
25 what we're here to determine is did Ocwen, his mortgage

1 company, did they do a reasonable investigation when he
2 complained about the fact that his mortgage was both showing
3 on his credit as current, which it was, 12 months previous
4 to never a late payment. The whole period of time that's
5 going to be an issue, the evidence is going to show he was
6 never late. He was on time.

7 More importantly, it was very important, the evidence
8 will show, for Mr. Daugherty to have good credit because his
9 mortgage was coming due for renewal. He had a balloon note.

10 A balloon note is a mortgage where you agree to pay so
11 many payments over 10 years. But at that 10th year, 15th
12 year, whenever the balloon comes due, the whole balance of
13 the mortgage comes due and you have to go out and refinance.

14 Sometimes that works to the benefit of the bank. If
15 the bank's locked into a low interest loan and interest
16 rates go up, well, when the balloon comes around, whoever
17 finances it is going to make more money.

18 In this case, the rates had dropped significantly and
19 Mr. Daugherty had a, I think a six percent or so loan. The
20 rates were significantly less than that.

21 A year and a half before Mr. Daugherty's balloon note
22 came due -- now, this is a note -- this is a mortgage on his
23 home. This is his home where he's raised his family, he's
24 lived 18 years.

25 A year and a half before the balloon came due,

1 Mr. Daugherty did his homework. He said, "I need to make
2 sure that my credit is up to snuff so I can refinance my
3 home when the balloon comes due."

4 So he started a year and a half early. That will be
5 our evidence. And when he first looked at his credit and
6 saw the error was way back in March of 2013.

7 And I have a timeline here, folks. I can't keep all of
8 this straight. And this is lineal. It starts here in March
9 of 2013. And our evidence is going to go clear to this
10 point in time, August of 2014 when Mr. Daugherty's credit
11 was finally fixed. The improper notation was taken off of
12 his credit report.

13 Now, the evidence is going to be Ocwen shows up on
14 Mr. Daugherty's credit report as current, payments made on
15 time. But then it appears again as in foreclosure, more
16 than five months in default, just polar opposites; same
17 name, same account number. Yet, he is shown in his report
18 as both current and in default.

19 And this existed despite what our evidence will show
20 numerous -- actually, 29 times our evidence will show Ocwen
21 had an opportunity to fix this by reasonably investigating
22 his complaint and fixing it.

23 Our evidence will be that on 29 occasions Ocwen didn't
24 recognize the problem, didn't reasonably investigate, and
25 didn't fix it.

1 In fact, our evidence is going to show that even after
2 this lawsuit was filed and assigned to Judge Berger, Ocwen
3 again confirmed that Mr. Daugherty's note was current, but
4 on another line that he was still in foreclosure and five
5 months behind even after this lawsuit was filed.

6 And the evidence will be that the only way
7 Mr. Daugherty's credit ever got fixed was not because Ocwen
8 finally fixed it. Ocwen never fixed it, never tried to fix
9 it. It was only after this lawsuit was brought that
10 Equifax, the reporting agency, on its own took his current
11 mortgage off his credit report and his defaulted mortgage.

12 So they not only took off the bad one that he had been
13 trying to get off all along. They took off the good one as
14 well. But that's how it happened, not because Ocwen said or
15 did anything to try to help him.

16 And, again, we start back in March of 2013. The
17 evidence will be when Mr. Daugherty checks, he's shocked.
18 He's in default, but he's not in default. He's current.
19 But his report's showing him in default.

20 So he did what I think anyone would do. He contacted
21 Ocwen. He wrote them a letter. Ocwen acknowledges receipt
22 of the letter. And in his letter he said, "My credit report
23 states that I'm currently behind \$6,128 with Ocwen Loan
24 Services and that I am in foreclosure." He wrote them that
25 letter.

1 They logged it into their records and they wrote him a
2 letter back. And they wrote back to him saying, "Well, you
3 had some concern about your credit report back in 2012."
4 Well, they missed the point.

5 Ocwen's records show that they said, "Well, back in
6 2012 you were late on some payments." But what
7 Mr. Daugherty wrote them and said, "I am currently showing
8 \$6,000 behind and I'm current."

9 It didn't -- they didn't fix the problem. They
10 essentially did nothing. They wrote him back and said, "We
11 show you as current," but they didn't investigate. They
12 didn't look to see what was actually showing up on his
13 credit report; that is, he was current on one line and in
14 foreclosure on another.

15 Next, Equifax contacted Ocwen. They said -- and you're
16 going to hear a lot about this term, an Automated Consumer
17 Dispute Verification, ACDV. And it's a universal document
18 used throughout the credit industry for a credit reporting
19 agency like Equifax or Experian or TransUnion when a
20 consumer says, "Hey, you got my report wrong," the reporter,
21 that's being one of the three credit agencies, they fill out
22 this ACDV and send it electronically to the creditor; in
23 this case, Ocwen.

24 In -- a few days after Mr. Daugherty's letter, on
25 March 20th Ocwen's notes reflect that it received two ACDVs

1 from Ocwen. One ACDV said the account was showing as
2 current and they wanted Ocwen to verify that. Ocwen
3 verified that it was current.

4 A second or two later, seconds or two later another
5 request comes in for an ACDV for Ocwen to verify that
6 Mr. Daugherty was in foreclosure. And Ocwen verified it.
7 Within a minute of verifying that he was current and
8 responding to one ACDV, it responded to another ACDV that
9 said he was in default.

10 And the first time this happened in March, there were
11 actually two different employees of Ocwen. There were two
12 different employees. The first employee received it and
13 confirmed that it was in foreclosure. The second employee a
14 minute or so later received an ACDV and he confirmed that it
15 was current. Two different employees.

16 As we go on, there's actually 24 of these that
17 happened. They come in sets of two. So the two came in in
18 March. One employee verified him in foreclosure. The other
19 employee verified him as current.

20 In June, two more ACDVs come from Equifax to Ocwen.
21 One says, "Verify whether or not he's current." The other
22 says, "Verify whether or not he is in foreclosure."

23 Ocwen responded, "Yes, he is current," to the one ACDV
24 and, "Yes, he is in default \$6,000, five or more payments
25 behind," when they responded to the other ACDV.

1 This time, the same employee, a fellow named Daniel
2 John Wesley from Benhaluru, India, received the one that
3 said he was in foreclosure and verified it. Within a
4 minute, he received the one that said he was current. He
5 verified that too.

6 So nothing's happened. We're now into June. July, the
7 same thing. Two ACDVs roll in back-to-back. The same
8 employee, Raj Kumar Singh in Benhaluru, India, he receives
9 the first one that says they're in foreclosure, five or more
10 payments behind, owes \$6,000. He verifies that.

11 Within seconds, he gets a second request for
12 verification, an ACDV that says Mr. Daugherty is current.
13 He verifies that too.

14 This -- it goes on and on and on. Twelve times over
15 the course of a year and a half the ACDVs come in from
16 Equifax, and every one of them is verified as correct by
17 Ocwen.

18 Mr. Daugherty's credit is smeared. He can't explain to
19 a banker that, "Even though it says I'm in foreclosure, I'm
20 really not in foreclosure. I'm current." Well, Ocwen is
21 going to tell you that he was current this whole time.

22 So it happened in -- the evidence will be it happened
23 again in October. The same employee within minutes
24 confirmed that he was current on one ACDV and he was in
25 default on another.

1 It happens again in December. The same employee within
2 minutes of each other confirms that he's current and
3 confirms on another form that he is in foreclosure, \$6,000
4 behind, five or more payments behind.

5 It happens again in January. January 17th another
6 employee, Suresh VK from Bangalore, India, receives two
7 ACDVs, one saying confirm that he's current. The other
8 saying confirm that Mr. Daugherty is in foreclosure. And
9 they verify both of them and send them back to Equifax.

10 It happens again in March of 2014. Mr. Daugherty
11 calls. He testified he called them up. And it's in their
12 notes. He called them up and explained to them that, you
13 know, "You've got to fix this. I have to get re-fi-ed. I
14 have a balloon coming due."

15 And he started back in March of 2013. We're now up
16 into March -- we're a year later. It's still not fixed.
17 And Mr. Daugherty's going to tell you about calling Ocwen to
18 try to get it fixed and talking to some fellow named TR
19 Rajani. And he's going to tell you that nothing got fixed.

20 He not only called, he faxed in a letter. And the
21 letter explained in great detail how his credit has been
22 showing as current and in default at the same time. Ocwen
23 has the letter. The text of the letter is right in Ocwen's
24 records.

25 In March -- later in March, two more ACDVs come in from

1 Equifax. One says, "Please confirm that he's current." The
2 other one says, "Please confirm he's in foreclosure." And,
3 of course, the same employee, Raj Kumar. We met him
4 earlier. He confirmed within seconds of each other that he
5 is -- yes, he's current and the other one he confirmed, yes,
6 he is in foreclosure.

7 Now, each time one of these ACDVs come in, I think the
8 Judge is going to tell you at the end of the case that the
9 duty is for Ocwen to make a reasonable investigation. And
10 we can show you what their investigation consisted of and
11 how long it took in seconds.

12 Each of these so-called investigations took less than a
13 few seconds. None of them was any investigation. The only
14 thing any employee ever did was to confirm the last four of
15 Mr. Daugherty's Social Security number or look and see that
16 he actually signed the deed of trust.

17 That's the only investigation that was done over and --
18 well, this, this rubber stamping verifying these accounts
19 was done over and over again. And each time, the employee
20 merely confirmed the Social Security number or peeked in a
21 file and said, "Yep, he signed it, verified."

22 April, 2014, two more ACDVs come in. One he's current;
23 one he's in default. They confirm both, verify both, send
24 them back.

25 Finally, Mr. Daugherty's going to tell you in June he

1 actually called Ocwen, June of 2014, and said, "Listen, you
2 can't seem to fix this, but can you give me a letter? I
3 just need a letter that I can take to the bank to show that
4 my mortgage is current, that I'm not in foreclosure."

5 That's all in the notes of Ocwen. And Ocwen's notes
6 show that they did not provide any such letter. And, in
7 fact, within a few days, two more ACDVs came in from Equifax
8 saying, "Hey, please verify that he's current or please
9 verify that he's in default."

10 And the same employee, again Mr. Raj Kumar Singh from
11 Bangalore, India, he confirmed that the account was current.
12 And a minute or so later, he confirmed that the account was
13 in default.

14 It happens again in June. By this time, Mr. Daugherty
15 got the Consumer Financial Protection Bureau in Washington,
16 D.C., to try to help him. They wrote Ocwen -- it's in
17 Ocwen's notes -- and said, "What's going on here? How is
18 this guy being shown as in default? Was he in default?"

19 And he wasn't in default in these months of 2013 and
20 they give I think five months. And, of course, he was
21 current every month in 2013. But, nonetheless, the Consumer
22 Bureau in Washington, D.C., asked Ocwen to confirm that he
23 was current for those five months in 2013.

24 Well, they did a quick investigation, a minute or two
25 the records will show, Ocwen's own records. And they

1 responded, "Well, he was in default in 2012."

2 The CFPB contacts him again and says, "We need to know
3 about 2013." At that point, Ocwen gets back to the CFPB and
4 they copy Mr. Daugherty and they say, "We're going to fix
5 it."

6 And they actually sent a form in to fix it. But they
7 didn't fill the form out right. They said -- they took the
8 foreclosure off, but they left and validated the fact that
9 he was still five or more months behind.

10 So when they validate that he's five or more months
11 behind, it washes out the fact that they said he was current
12 because they -- we'll see the form. You can see it in
13 Ocwen's notes.

14 After the CFPB got done, it still wasn't fixed. In
15 July of 2014 Mr. Daugherty's filed this lawsuit. We filed
16 this lawsuit, and this lawsuit was assigned to Judge Berger.

17 His balloon note came due. Suit was filed July 8th.
18 His balloon note came due July 26th. He still has not been
19 able to refinance. He's made every payment on time for the
20 past 14, 15 months.

21 Even though his balloon came due, even though they
22 wouldn't fix his credit, even though he couldn't get a loan,
23 he made his next payment. After the balloon came due, he
24 made his next payment on time and that was in July.

25 Suit is -- that was in August. July the suit's filed.

1 He makes his payment. He makes his August payment. It's
2 accepted.

3 The suit is filed. It's assigned to Judge Berger. And
4 two more ACDVs come in from Equifax in August of 2014. One
5 says, "Please verify that he's current." The other says,
6 "Please verify that he's in default and in foreclosure and
7 \$6,000 behind."

8 The employee of Ocwen, even with this lawsuit pending,
9 Daniel John Wesley of Benhaluru, India, confirms that the
10 account is current, and then seconds later confirms that
11 it's in default.

12 Finally, Equifax erases all mention of Ocwen from
13 Mr. Daugherty's credit report. Ocwen never did fix it.
14 They never asked Equifax to take it off. They never asked
15 them to strike it, to remove it. They just did these 10-,
16 15-, 30-second investigations.

17 And we think the Judge is going to tell you at the
18 conclusion of the trial that you just can't do a cursory
19 investigation. And you're going to -- we can show you every
20 one of these investigations was a few seconds where someone
21 looked and said, "Yep, the Social Security matches;
22 verified. Yep, he signed the note; verified."

23 There were no real investigations. No one looked past
24 the last four of his Social Security number or the fact that
25 he signed the mortgage document.

1 At no time will there be any evidence that Ocwen
2 actually looked at the credit report.

3 Now, there's going to be an exhibit, and it comes right
4 out of Ocwen's file. And we're going to offer a, what
5 Mr. Daugherty sent to -- what Mr. Daugherty actually sent to
6 Ocwen and said, "Fix this."

7 And he also sent it to the Consumer Financial
8 Protection Bureau who sent it to Ocwen. And this exhibit
9 that Ocwen acknowledges receiving, not only when
10 Mr. Daugherty sent it to Ocwen but when the Federal Consumer
11 Financial Bureau sent it to Ocwen and said, "Fix this," and
12 it has circled with an arrow to it "inaccurate" where it
13 shows him in foreclosure and has circles and arrows saying
14 "inaccurate" when they're showing him late.

15 Where they're showing him late, as 120 days past due in
16 March of 2013, Ocwen had this two different ways.
17 Mr. Daugherty sent it to them. The federal government sent
18 it to them. It has a big circle, "inaccurate." Ocwen loan,
19 his loan number at least 120 days or more than four months
20 past due for \$100,000.

21 And it also shows that he was 120 days past due in
22 March, but he was current in February. Well, this is
23 impossible. If you're current in February and you don't
24 make your March payment, which he did, you would be 30
25 days -- well, it's 120.

1 And then in April and May they say he's current and
2 then in June he becomes 120 days in default again. And in
3 July again he's showing 120. None of this can possibly be.

4 But even with this in their hands, Ocwen couldn't fix
5 it, never fixed it, and that's why we're here today. Our
6 burden is to prove that Ocwen never conducted any
7 investigation, let alone a reasonable investigation.

8 I think the Judge is going to tell you that an
9 investigation -- the duty of Ocwen is to make a searching
10 inquiry. Look at all available facts. Look beyond the
11 Social Security number.

12 I think the Judge is going to tell you at the end of
13 the case that Ocwen's duty is to go beyond a cursory view of
14 internal records, and that Ocwen can't just restrict its
15 investigation to looking at a Social Security number,
16 looking at a signature.

17 Any reasonable investigation would have fixed this
18 problem like that, and it should have been fixed in March of
19 2013 when they got a letter in their records saying, "I'm
20 showing as in foreclosure and \$6,000 behind."

21 But notwithstanding that and notwithstanding the 24
22 ACDVs that Ocwen received and verified, 12 of them verifying
23 he's in default and 12 of them verifying he's current,
24 notwithstanding three inquiries by the Consumer Financial
25 Protection Bureau in Washington, D.C., and notwithstanding a

1 letter and another phone call, 29 times there was an
2 opportunity for someone to fix this and it never happened.

3 And we're going to ask you to conclude at the end of
4 the trial that Ocwen did not do a reasonable investigation
5 to fix what was stopping Mr. Daugherty from getting a loan.
6 And, in fact, once it came off, once this lawsuit was filed
7 and it finally came off, he qualified for a loan.

8 Thank you.

9 THE COURT: Mr. Manning.

10 MR. MANNING: May I have a brief sidebar before I
11 begin?

12 THE COURT: If it's needed.

13 MR. MANNING: Yes, Judge.

14 THE COURT: Come on up.

15 (Bench conference on the record)

16 THE COURT: Mr. Manning.

17 MR. MANNING: Prior to Mr. Young beginning his
18 opening statement I drew Your Honor's attention to emphasis
19 of Equifax documents as being improper. The theme
20 throughout his opening -- you heard it a number of times --
21 was that Ocwen verified that this account was both current
22 and delinquent.

23 That word "verified" comes straight from the Equifax
24 documents. It does not appear on the ACDV responses from
25 Ocwen. And I want to show it to you because this is exactly

1 what I'm talking about.

2 THE COURT: I don't need to see the document,
3 counsel. Go ahead and make your argument.

4 MR. MANNING: It says right there "verified."

5 THE COURT: I don't need to see the document. Go
6 ahead and make your argument.

7 MR. MANNING: Okay. Thank you, Judge.

8 The reference to 24 ACDVs as verifying anything is
9 Equifax ACDV responses. They are not Ocwen documents.
10 They're not proper. They were not disclosed on the
11 26(a)(3)s. They're hearsay. And they are the underlying
12 theme of his entire opening.

13 On the contrary, the ACDV responses from Ocwen that
14 Ocwen produced tell a very different story. They verify the
15 specific dispute. It's not a verification of the whole
16 form. It's only a response to the dispute.

17 And Mr. Young repeatedly said that Ocwen only did an ID
18 check. And, I mean, here's another exhibit from Ocwen, OLS
19 1343, that says that specific dispute was showing late and
20 Ocwen modified it.

21 That's a misstatement. Unless he's relying on the
22 Equifax documents, he's misstating the testimony. And I
23 understand that I can refute that. What I can't refute is
24 the fact that he's referencing verification 24 times which
25 is only in these Equifax documents which should be improper.

1 THE COURT: Any response you want to give?

2 MR. YOUNG: Your Honor, let me first point out
3 that both versions of the ACDVs say "verified." Both -- the
4 Ocwen notes show that they verified this each and every
5 time. The Ocwen notes show that they received each and
6 every one of these ACDVs from Equifax. And then at some
7 point in time the ACDVs of Equifax and the ones that have
8 actually been produced by Ocwen are mirror images of
9 themselves.

10 Counsel is still trying to argue something that he
11 can't argue. This Equifax document is, in fact, -- it's
12 Equifax's insofar as this is what Equifax sent to them. But
13 then when Equifax sent -- when Ocwen sends it back and
14 checks "verified" and changes the information, at that point
15 it's their record. There's no difference between these two
16 sets of records.

17 Counsel is trying to take advantage of the fact that
18 they didn't give us the ACDVs for that initial period of
19 time.

20 THE COURT: Counsel, unless I am misunderstanding,
21 the objection is to the use -- your use of the word
22 "verification" which, according to Mr. Manning, can only
23 come from the Equifax documents.

24 I ruled earlier that I was going to allow you to talk
25 about the Equifax documents and I would rule on their

1 admissibility and that I would permit you to do so at your
2 own peril.

3 I don't think we're at any different juncture than we
4 were when you all were here before other than now in the
5 opening, if I accept Mr. Manning's argument as correct, you
6 have relied on the Equifax documents which I indicated I was
7 going to permit you to do at your own peril. So I don't see
8 that we're at much of a different juncture.

9 I overrule what I perceive to be an objection. I've
10 told the jury that these opening statements are not evidence
11 and specifically ruled that you could make reference to the
12 Equifax documents even if that is what you were doing.

13 I preserve the defendant's objection and exception to
14 my ruling.

15 Anything further?

16 MR. YOUNG: Your Honor, I just want to point out
17 that the word "verified" is in their own notes each and
18 every, every -- the numbers match and they say "verified."
19 So it's not as if I was at my own peril relying upon the
20 Equifax documents. Every Equifax document acknowledges
21 receipt and verified in their notes.

22 THE COURT: Your position, as I understand it, is
23 to refute that portion of the objection which indicated that
24 it's a misstatement, that Ocwen verified it. I accept that
25 as true.

1 I know that you all have a dispute about it, but
2 there's nothing that's happened that I didn't authorize when
3 you all were here initially.

4 I preserve the defendant's objection and exception to
5 my ruling.

6 MR. MANNING: Thank you, Judge.

7 MR. YOUNG: Thank you, Your Honor.

8 (Bench conference concluded)

9 MR. MANNING: Your Honor, I need to use the
10 PowerPoint so the jury can see it. Could we publish that?

11 THE COURT: Is there an objection? I don't know
12 what you want to publish. Has it been shown to counsel for
13 the plaintiff, Mr. Manning?

14 MR. MANNING: Okay.

15 THE COURT: The -- whatever it is you want -- or
16 maybe there's no objection.

17 MR. YOUNG: I'd be glad to look at it.

18 THE COURT: All right.

19 (Pause)

20 MR. MANNING: Your Honor, they would like more
21 time. My thought is if we take an early recess. I don't
22 have any problem with them taking as much time as they want
23 to look at it. I defer to Your Honor on how you want to do
24 that.

25 THE COURT: How much time do you need, counsel?

1 MR. YOUNG: I think we've looked at half of the 57
2 slides. We would at least like an opportunity -- we've had
3 several issues we've already addressed, but we're only
4 halfway through the slides.

5 THE COURT: How much time do you think you will
6 need, counsel?

7 MR. YOUNG: Fifteen minutes additionally.

8 THE COURT: All right. Let's take that and I will
9 see what, if any, issues remain. I would like to get these
10 opening statements in this morning if possible.

11 Ladies and gentlemen, I'm going to give you a recess.
12 While you're out, do not discuss this case among yourselves
13 or permit anyone to discuss it with you or in your presence.
14 And please be in your jury lounge at ten minutes till the
15 hour.

16 We'll stand in recess for your purposes. The court
17 security officer will show you where your jury lounge is.

18 (Jury retired to the jury room at 11:33 a.m.)

19 THE COURT: We'll stand in recess until ten
20 minutes till the hour for you to review those, counsel. And
21 I will take the bench before bringing the jury in to see if
22 there are any issues.

23 Going forward, you all need to take care of this before
24 presentation so we don't have this type of delay with the
25 jury.

1 (Recess taken from 11:34 a.m. until 11:45 a.m.)

2 THE COURT: All right, counsel, you've had an
3 opportunity to review the documents that Mr. Manning wants
4 to show to the jury during opening. Any objections?

5 MR. YOUNG: Yes, Your Honor. I object to the use
6 of such presentation. We identified numerous slides where
7 counsel makes reference to evidence that no one has ever
8 seen. It's not -- he's not going to be able to prove it.
9 At several points it crosses into closing argument.

10 But I can't ask this Court to go through 57 slides and
11 hear evidentiary arguments is basically what we have. And,
12 you know, there's slides about credit scores. There's no
13 evidence of credit scores in this case, but he's going to
14 talk about credit scores in these slides.

15 But then again I'm in the -- he shows what he wants and
16 says what he wants at his peril. But now I'm in a position
17 where I don't want the jury to think that I somehow bless
18 this slideshow which is full of things that they can't prove
19 and crosses over into closing argument on multiple
20 occasions. I don't want this jury to think that I somehow
21 bless this presentation.

22 And there are -- there are things in there that there's
23 no evidence. They're setting up straw men that they can't
24 prove. So at this point, I just don't -- if he uses it, I
25 don't want to be held accountable or somehow because the

1 jury knows that I had the chance to review it, or we can go
2 through the 57 slides or the 59 slides one by one. I've
3 identified six, eight, ten of them that we thought were
4 clearly wrong.

5 THE COURT: My suggestion, counsel, is that we do
6 as I did with respect to Mr. Manning's objections to the
7 documents which he indicates you were going to make
8 reference to and later indicated you did make reference to
9 during opening that he considered to be inadmissible is to
10 allow him to go forward with my saying at the beginning of
11 his opening that I will take up your objections at a later
12 point.

13 That gets rid of your concern that the jury thinks that
14 you have acquiesced in the substance of what's included.
15 But, at the same time, if there are things that are such
16 that you don't want the jury to hear about and there's an
17 objection that I need to hear specifically, I will take that
18 up. But generally that would be my answer to what you have
19 said thus far.

20 MR. YOUNG: Thank you, Your Honor.

21 I'm just concerned that -- caution the jury that the
22 plaintiff has not sanctioned or approved any of these
23 materials that they're going to see.

24 THE COURT: Well, I don't want to take a position
25 with the jury so that you lawyers are able to try your

1 respective cases other than at the beginning of Mr.
2 Manning's opening I will say in front of the jury,
3 Mr. Young, that I will take up your objections to anything
4 contained in it at a later point.

5 MR. YOUNG: Thank you, Your Honor.

6 THE COURT: Mr. Manning, any objection to
7 proceeding in that fashion?

8 MR. MANNING: I would just prefer that it be
9 mutual, that it be -- you say his objections are preserved
10 as you did with me. I don't think there's anything to take
11 up at a later point. He's preserving them now. That's the
12 issue.

13 THE COURT: Well, he hasn't really preserved them
14 because there's no specifics here. He's just indicated that
15 there are some things that he objects. It's very hard for
16 me to preserve an objection generally based on what's been
17 stated here thus far that he has an objection to some of the
18 slides.

19 And, so, if he wants to object specifically, I want to
20 give him that opportunity at a later point as I took up
21 specific objections to what you thought he was going to use
22 in his opening.

23 MR. MANNING: And, Judge, the only specific
24 objection that I've heard is the credit score issue. And
25 that comes straight out of Mr. Daugherty's deposition.

1 On Page 77 and 78 of Mr. Daugherty's deposition he says
2 that, "Yes, I see that my Equifax score was lower than my
3 TransUnion and Experian score."

4 And I don't know -- I mean, he's identified that on a
5 couple of the slides but, again, that's evidentiary.

6 THE COURT: Mr. Manning, your objection to what
7 I've proposed is that you would simply have me to say your
8 objections are preserved; is that correct?

9 MR. MANNING: I don't, I don't view them as having
10 made any objection but that. And so my, my preference,
11 Judge, is to -- as you've indicated, there's no specific
12 objection. I should proceed.

13 THE COURT: All right. I'm going to allow you to
14 proceed with the jury. And when the jury comes in, I will
15 tell them that I will take up his objections at a later
16 point.

17 I do that, gentlemen and lady, to preserve our ability
18 to go forward with these opening statements at this time
19 and, at the same time, not to preclude either of you from
20 bringing up objections as we go forward.

21 To the extent that I'm not giving the exact language
22 that you asked for, Mr. Manning, I preserve your objection
23 and exception.

24 MR. MANNING: And, Judge, if I may, as you said to
25 us outside the jury's hearing, you know, we'll deal with the

1 objections at a later point. Maybe the instruction is, "As
2 I did with the defendant and his objections, I'll do the
3 same for the plaintiff."

4 (The jury returned into the courtroom)

5 THE COURT: Mr. Manning, will you go forward with
6 opening statement at this time?

7 MR. MANNING: Yes, Judge.

8 THE COURT: Mr. Young, I'll take up your
9 objections at a later point.

10 MR. YOUNG: Thank you, Your Honor.

11 MR. MANNING: Ladies and gentlemen, thank you for
12 your time today. Thank you for your service. We greatly
13 appreciate it.

14 As I have already introduced myself, I represent the
15 defendant, Ocwen Loan Servicing. And I want to start just
16 by talking about the importance of roles. It's very
17 important for us to know who the parties are and what their
18 roles are.

19 So I have a couple of slides that hopefully will just
20 give background. You probably all have at one point seen
21 your credit report, or maybe if you haven't, you've seen the
22 advertisements that you can get a free credit report, you
23 know, download it here. The dispute here has to do with
24 credit reports.

25 Now, the entity that prepares the credit report,

1 there's three major credit bureaus. Those credit bureaus
2 are Equifax, TransUnion, and Experian. You may have heard
3 their names before. Those are the three national credit
4 reporting agencies.

5 And that's important to understand because those credit
6 bureaus are going to actually report. They actually produce
7 the credit report and provide a score. And you'll hear
8 testimony from our expert witness, a man who actually worked
9 at Equifax, who talks about how they have proprietary ways
10 of scoring. But the importance here is Ocwen, my client, is
11 not a credit bureau. They don't report anything on a
12 report. What they do is they furnish data.

13 So what is a furnisher? A furnisher is the, the credit
14 agency. We have a loan, and you've heard testimony or --
15 I'm sorry -- opening statements about how Mr. Daugherty has
16 a loan with my company. And that loan is a mortgage. So
17 every month, you'll hear testimony from our corporate
18 representative, that Ocwen furnishes data about the status
19 of that loan.

20 A furnisher is like a mailman. They receive the mail
21 and they look at the envelope and they deliver it to whoever
22 needs it. They send it where it's addressed.

23 And the evidence in this case will show that the data
24 that was delivered, furnished by my client, Ocwen, was
25 always accurate. And that's why you heard Mr. Young during

1 his opening statement say that there was always one account
2 that was right. But then there was a second account.

3 Now, what Mr. Young didn't tell you is that no one ever
4 told my client, Ocwen, that there were two accounts being
5 reported on his credit report with Equifax.

6 Of all three of these credit reporting agencies, only
7 Equifax had this problem. TransUnion had it right.
8 Experian had it right. Equifax was showing two.

9 But the plaintiff, Mr. Daugherty, the company he hired
10 to help him with his credit called Aggressive Credit Repair
11 and then Equifax, none of those three entities ever provided
12 my client, Ocwen, with a credit report showing the same
13 account was reporting twice with different information.
14 That's very important to understand the roles.

15 So let's talk about generally what the case is about.
16 I mentioned Aggressive Credit Repair. That's the company
17 that Mr. Daugherty hired to dispute various information
18 about his credit report. He had bad credit at the time and
19 he wanted to improve it. So he hired a company to help him
20 dispute those accounts.

21 Those disputes are on forms written by this company
22 called Aggressive Credit Repair. They're then sent to the
23 Credit Bureau where -- I'm going to talk about Equifax a lot
24 because that's the company that had the issue.

25 Equifax would then receive those letters and would have

1 to send on the dispute to my client, Ocwen.

2 What's important again is the role. When they -- when
3 Equifax receives that dispute, they're like a quarterback.
4 Okay? They call the play. They say, "We received a
5 dispute," and then they assign a code to it. This is what
6 the dispute is about.

7 Equifax controls that code. They put a code on a form.
8 It's just a document that goes through a system called
9 e-OSCAR. It's electronic. But the point is Equifax
10 identifies the dispute and then they say, "Go investigate
11 this."

12 Now, the evidence will show that Ocwen, when it
13 received those forms, every time investigated the dispute.
14 It ran the play the quarterback called. That's what the
15 evidence will show about the reasonable investigation.

16 Now, let's go on to the next. So when we have these
17 disputes, and we're talking about disputes, there are a
18 couple of different -- really in this case only two disputes
19 that were ever identified.

20 One was Equifax assigned a code called 001 which just
21 means Mr. Daugherty is saying, "It's not my account." The
22 second one is 007. And that means, "Go investigate the
23 account status, the pay history, and the rate the -- the
24 payment rate."

25 These are just codes. The importance is those are,

1 those are what my client then has to look for. And you'll
2 see in plaintiff's own exhibits where we have our ACDV forms
3 that we went and we investigated each one of those disputes
4 and responded accurately.

5 Now, let's go on to what the claims are. So
6 Mr. Daugherty says that my client didn't do a reasonable
7 investigation. And he claimed that's what caused him to be
8 denied credit. He also claims that it caused him emotional
9 distress. And we're going to talk about what the evidence
10 will show on each of those.

11 The evidence will show that the denial of credit was
12 being caused not by what Ocwen was doing, but by other
13 factors on his credit report.

14 Now, as you can imagine, any one person has more than
15 one loan. You have one mortgage perhaps, but you may have
16 credit cards. You may have a loan for your car, et cetera.
17 All of those creditors are furnishing data. They're,
18 they're delivering the mail to the credit bureaus. Here's
19 what the status of this account is. And the credit bureaus
20 collect that info and report on it. My client doesn't
21 report on it. It furnishes data.

22 The evidence will show that here plaintiff was denied
23 credit because he had 11 other accounts that were in
24 collection. And he also had two liens for unpaid taxes; one
25 for federal and one for state.

1 What's important is the parties agree that the only
2 issue is appearing on Equifax's credit report. Equifax's
3 credit report, his score, Mr. Daugherty's score on that was
4 actually higher than it was with the Experian company. And
5 Experian wasn't reporting on the Ocwen account at all. It
6 just wasn't considering it.

7 And even though Equifax was doing it wrong, its score
8 was still higher. And that helps explain why he was having
9 difficulty getting credit. It wasn't something that Ocwen
10 had caused. There's also no evidence that he was
11 emotionally distressed.

12 So we've talked already briefly about who's involved;
13 the plaintiff, my client, Equifax, the credit bureau, and
14 then this third party called Aggressive Credit Repair.

15 And you'll recall the Court asked you during *voir dire*
16 about a man named Lorin Hanks. He's the owner of that
17 business. We deposed him and you'll hear testimony from his
18 deposition.

19 So starting at the beginning, the plaintiff took out a
20 loan on his home, a \$100,000 mortgage. As you know, a
21 mortgage requires you to make payments every month. The
22 payment in full was due in July, 2014. And currently the
23 plaintiff owes \$95,000 on the loan. And you heard Mr. Young
24 tell you that he was able to qualify for additional credit
25 so he could refinance.

1 But in the last almost two years he hasn't paid
2 anything on that mortgage. He continues to live there and
3 he's not paying my client or anybody else anything.

4 Next, my client Ocwen. What's Ocwen? Ocwen is a loan
5 servicer. So we didn't lend the money. It was a different
6 entity that actually did the loan. But the loan was
7 transferred to us to service it, which is things like
8 collecting the payments, telling him about taxes and
9 insurance that are due, making sure that the property is
10 maintained. If he falls behind, we have to make sure the
11 property is protected.

12 When the loan came over to Ocwen, Mr. Daugherty was
13 three months behind and in foreclosure. And he doesn't
14 dispute that. He was having financial difficulty. To his
15 credit, he was able to get current.

16 When that occurred and Ocwen investigated what it had
17 received from the prior company, it noticed that the opening
18 date on the account was wrong, meaning the prior company
19 that was involved with the loan had an opening date with the
20 wrong month. So it corrected it.

21 And you'll hear testimony from our expert witness that
22 says when Ocwen actually did the right thing and corrected
23 the opening date, Equifax interpreted that as a new account.
24 And that's why it had two accounts on his credit report.

25 But, again, the evidence will show that my client never

1 knew that because we never received the credit report. All
2 we get are these ACDVs which Mr. Young told you about. And
3 we're asked, like a quarterback, to address the specific
4 play. Go look at this.

5 Every time we looked at it and addressed it and we
6 repeatedly told Equifax, "Look, he's current. He's not
7 late." But Equifax kept reporting two tradelines; one
8 current like we told them, the other late.

9 So Equifax is not a party to this suit. You won't hear
10 testimony from them about why they were doing this
11 duplicative account, why they failed to correct it. They're
12 not here.

13 We already talked about when -- what happened -- the
14 evidence will show that Ocwen became the loan servicer.
15 Again, it's not disputed that when it came over, it was
16 late. But that got corrected.

17 I'm going to skip for the interest of lunch a couple of
18 slides here.

19 John, let's go to slide 15, please.

20 So the evidence will show here through the documents
21 that Equifax was only updating one of those two trade
22 accounts. They're called tradelines. It's just a summary
23 of the information on a credit report.

24 Because Equifax didn't update both, one of them
25 continued to show that old information when he had been late

1 and in foreclosure.

2 When Mr. Daugherty attempted to refinance, he had a
3 number of other collection accounts. And you'll hear
4 testimony from him as well that he knew he had bad credit
5 and he was trying to get it cleaned up.

6 Our expert witness, who actually worked at Equifax,
7 will explain that any one of those collection accounts or
8 tax liens could have been the reason why he was denied
9 credit. You can't pinpoint it to any one thing that Equifax
10 was reporting as late, especially when the score was higher
11 than Experian and it wasn't showing him as late on these,
12 both accounts. One was perfect.

13 So the dispute process started in March, 2013. And
14 that's when the first letters came over from this company
15 Mr. Daugherty hired, Aggressive Credit Repair. And they
16 sent a letter every month and it disputed a number of
17 different accounts. And you'll see the letter during the
18 testimony. And for each one of those, that company wrote
19 the same thing. "It's not my account and I was never late."

20 Now, the evidence will show that neither one of those
21 is accurate as it appears to Ocwen. Ocwen -- Mr. Daugherty
22 admits he had an account with Ocwen and he still does. And
23 also he had been late. When the account came over, he was
24 three months behind in foreclosure.

25 So when we receive those, we have to investigate what

1 the dispute is. The dispute was not accurate. Nonetheless,
2 the evidence will show that Ocwen repeatedly investigated
3 each new request and went in and checked. Some of the
4 requests were just, "Verify that he has an account with you.
5 Check his Social Security number." And our witness will,
6 will describe that process.

7 Ocwen has a number of databases that it has access to
8 and our credit analysts. They can go in and they can pull
9 the original loan documents. It's in a system called CIS.
10 It's now called Vault.

11 But the point is it's a software program where you can
12 pull up the actual note. And there were entries that show,
13 "We looked at the note. He signed it. He verified that it
14 was his, Social matches, account number matches, name
15 matches."

16 So then we would respond to that dispute, "not his/not
17 hers." Yes, it is his and here's the information.

18 The second dispute, "never late," my client didn't just
19 say, "No, he was late in the past." They went and they
20 checked the current status. Is he current or late right
21 now?

22 And you'll see a number of those ACDVs where my client
23 responded and actually modified it. It didn't know there
24 were two accounts. It had only always said he was current
25 in months when he was current.

1 But when it got Equifax disputing it, it actually
2 looked at the second system called REALServicing.
3 REALServicing has the whole pay history, and we'll show you
4 that during the trial. The pay history of when he paid, was
5 he late, was he on time, that information is all in the
6 system and it's able to be accessed by the credit analysts.
7 And that's how they were able to modify the account to say,
8 no, he's not late, he's current.

9 And the evidence will show that Ocwen did that a number
10 of times, ultimately culminating in a new form. I know the
11 forms -- there's too many of them. It's called an Automated
12 Universal Data Form. What that means is Ocwen on a form to
13 all three credit bureaus says, "All of you all update this
14 account. He's current. He's not past due."

15 Because we had had so many repeat disputes, Ocwen on
16 its own voluntarily said, "We're just going to send this
17 universal data form. We're going to tell everybody."

18 Even after that, the evidence will show Equifax was
19 still reporting a second account that Ocwen didn't know
20 about and that it was still late.

21 The problem here is the duplicative account that
22 plaintiff and the company he hired, the so-called
23 professional Aggressive Credit Repair, never told Ocwen.
24 Equifax never told Ocwen. Ocwen did what it was asked by
25 the quarterback to run the play, go check this dispute, and

1 responded, and did so reasonably as the evidence will show.

2 I'm going to skip a couple more slides. Let's go to
3 18.

4 John Ulzheimer, I mentioned his name. So he worked at
5 Equifax for six years. He's got 24 years of experience in
6 the industry. He's going to be able to help you understand
7 how the dispute process works, the different roles, and
8 specifically how Ocwen as a furnisher only responds to the
9 dispute. It, it looks where it's told to look and it goes
10 and addresses that. That's its responsibility.

11 Then it's the responsibility of the credit bureau to
12 fix it. And his testimony will be that Equifax caused the
13 problem, continued the problem, and never fixed the problem
14 until months after this lawsuit.

15 Okay. Let's go to slide 20.

16 So you've heard a little bit about this, but I want to
17 give you kind of the high-level overview. So Mr. Daugherty
18 sees he needs to get better credit. He disputes through
19 this company what he thinks is questionable.

20 Now, the testimony will be that his company handled it.
21 They, they sent the same letter every month and disputed the
22 same things every month. And our expert will testify that
23 actually made things worse because they never actually
24 identified the problem, which was the duplicative tradeline,
25 that one account was reporting twice.

1 And his testimony will be that's an error, but it's an
2 error that's not that uncommon, so much so that in the
3 industry he'll explain there's actually a specific way to
4 fix it.

5 On these forms there's a box called FCRA, relevant
6 information. And in there you would identify dupe for
7 duplicative or dupe tradeline or duplicative tradeline. You
8 will not see a single ACDV response that ever says that.
9 The quarterback never called that play. That's what the
10 evidence will show.

11 That burden, as Mr. Ulzheimer will explain, in the
12 industry is on the credit bureau to provide all the relevant
13 data. There's no evidence, and you will hear no testimony,
14 that anyone ever told Ocwen that there were two tradelines
15 with one account; never saw the credit report. All that
16 information is housed with Equifax. Plaintiff had it, but
17 he didn't provide it to us.

18 So let's go to 22, skip a little bit.

19 So the boxes here at the bottom of this sheet show --
20 it's a bit like the telephone game if you've ever played
21 that. You know, some of the communication sometimes gets
22 lost in translation. But plaintiff has a credit report. He
23 talks to a third party. That third party, Aggressive Credit
24 Repair, then has to dispute and do so accurately. Then
25 Equifax has to receive that dispute and apply and interpret

1 the correct code.

2 Then Equifax sends that code to Ocwen, my client. My
3 client investigates the specific dispute, runs the play, and
4 has to do so with a reasonable investigation. We respond to
5 that form, the ACDV, back to Equifax. Equifax then has to
6 update it and then can provide an updated credit report to
7 the plaintiff.

8 So we've talked about the first step and I'm going to
9 go quickly through these. On slide 23, the first step,
10 plaintiff to Aggressive Credit Repair.

11 Aggressive Credit Repair wrote all those letters that
12 went to Equifax, the same letter every month, the same
13 disputes, never mentions duplicative tradeline.

14 Next slide. Then you have the Aggressive Credit Repair
15 going to Equifax. Again, there's other credit bureaus. The
16 only problem here is with the Equifax credit report. Every
17 dispute is the same, "not mine, never late." That's all
18 they said.

19 Next you go from Equifax to Ocwen. Equifax assigns a
20 dispute code. Some these ACDV forms say "not mine." Other
21 ones say "account status, pay history, payment rating." We
22 go to the specific dispute identified, investigate it, and
23 you'll see those forms.

24 When Ocwen received it and it said "not mine," that's
25 where we look and we validate. We're not verifying all the

1 data. We're verifying the data that is in the dispute. We
2 run the play the quarterback calls.

3 So here's a sample ACDV form. There's nothing magical
4 about it. It's just a printout of this system called
5 e-OSCAR. And it has a number of fields in it. And I'll
6 blow it up a little bit for you on slide 27.

7 So at the top of this form -- this is an example of one
8 of the Ocwen forms that you'll see. The top is what Equifax
9 fills in and provides to my client as the furnisher. The
10 gray on the right-hand side, you'll see that's where Ocwen
11 fills in the information. That's the information that it's
12 either verifying or modifying.

13 And if you see the dispute code number 1 there, it says
14 "not his/not hers." That's the code that Equifax applied.
15 And it said, with instructions like a quarterback calling a
16 play, "provide or confirm complete ID." That's what we're
17 asked to do. And you'll see an example of what we filled
18 out.

19 Oh, I mentioned -- go back one second. I mentioned
20 this FCRA relevant information box. That's where our expert
21 witness will explain the duplicative tradeline should have
22 been identified had Equifax done it right.

23 You'll see that in here and on some of these others
24 they knew how to use it. Equifax knew how to use that box
25 because they did fill in information in there. They just

1 never filled in what the actual problem was.

2 Okay. So let's skip 28. We talked about 29. Let's go
3 to 30.

4 So then you've got Equifax going to Ocwen and
5 explaining what the dispute is. From Equifax to Ocwen you
6 have the ACDV form. Ocwen responds and then it goes back to
7 Equifax.

8 Now we're on 33. So how does Ocwen do this? Now,
9 you'll hear testimony from our corporate representative,
10 Sandra Lyew, who explains that there's a month-long training
11 process for these credit analysts. And once they're
12 trained, classroom lecture, then there's going to be
13 shadowing where they have an assigned supervisor who knows
14 how to do this and shows them how to do it.

15 Then after that, there's actually supervision and
16 random sampling to make sure they're doing it right. They
17 want to make sure that when these responses come in, they
18 investigate the specific dispute with any information that
19 they need to make sure that it's reporting correctly. And
20 she'll describe all of that training, policy, and procedure
21 for you.

22 The evidence will show that Ocwen reasonably
23 investigated both disputes; that there were duplicative
24 accounts that weren't identified. So when Ocwen has it
25 coming in, it doesn't know that Equifax alone out of

1 everybody is the only one who's reporting one account twice.
2 He doesn't have two accounts. There's no dispute. That was
3 an Equifax mistake that was never revealed to Ocwen.

4 When Ocwen responds in its form and modifies or
5 corrects the account, then it's up to Equifax to make sure
6 it makes those adjustments to the credit report. And the
7 evidence will show that it didn't. It didn't take that
8 information and either delete that duplicative tradeline or
9 make sure it never showed late again.

10 Let's skip over to 37.

11 So the Court will instruct you on the law. The Court
12 has to provide you with the instructions at the conclusion
13 about legally who's responsible for what. But there are
14 elements of those, and the Court will explain that you -- my
15 client has to do a reasonable investigation. And to the
16 extent there wasn't, it actually had to cause something to
17 happen. That was the cause of a denial of credit; that that
18 specific incorrect response caused a denial; and then,
19 second, that there were damages flowing from that causation.

20 The evidence will show the plaintiff can't prove any of
21 those elements.

22 The next is the evidence has to show that there were
23 reasonable investigations in these disputes. And as I've
24 mentioned, the evidence will show that when the disputes
25 came in, Ocwen responded to each dispute as it was

1 specified. And you'll hear testimony from our corporate
2 representative that it investigated them using documents in
3 its system and confirmed, yeah, he signed it and, yet, he
4 had been late but he's not late anymore.

5 We talked about the training policies and procedures.
6 We talked about the causation. Okay. So let's go to 43.
7 We're going to skip a little bit. We're pushing lunch. I'm
8 sorry about that. Hang in there for a little bit more and
9 we'll take a break.

10 Causation. So let's talk about what the evidence will
11 show about responsibility.

12 The first mistake is that -- I've already mentioned
13 this to you briefly -- Equifax without Ocwen knowing added a
14 second mortgage loan. It had the same account number but it
15 had different information.

16 Equifax next failed to update both accounts. So one
17 was right, but one continued to show old information.

18 Mistake number three, Aggressive Credit Repair -- we've
19 abbreviated it here ACR -- when they were hired and paid
20 money by the plaintiff to help him, they never identified a
21 duplicative account in any of their letters. They were
22 charging him every month and they didn't actually write a
23 letter that said, "Hey, there should be only one account
24 here. He only has one mortgage with Ocwen."

25 Next this so-called expert didn't realize himself, and

1 you'll hear it from his deposition testimony, that only one
2 of the entries of these duplicates was being updated.

3 The next mistake was that Aggressive Credit Repair
4 didn't mention the duplicative tradeline. And every month
5 it kept sending the same form which, again, Ocwen had
6 already responded to. But Equifax continued to do the wrong
7 thing.

8 Now, mistake number seven, there was no credit report
9 from Equifax showing that there were two tradelines ever
10 given to my client, Ocwen. We didn't know about it. And
11 Equifax didn't correctly update that second account even
12 when Ocwen told it to, even when it went in there and said,
13 "Hey, you're reporting this account as past due and they're
14 current."

15 And you'll see this in plaintiff's own exhibits from my
16 client how they identified, yeah, this is showing late and
17 we said modify it. We didn't just verify it as Mr. Young
18 said in his opening statement. The documents will show we
19 said, "Correct it."

20 So, overall, we've identified those six mistakes.
21 We've also identified how plaintiff himself had 11 other
22 accounts in collection. And our expert witness will explain
23 if you have two or more accounts in collection, you're
24 already at the maximum adverse rating for that factor. If
25 you have tax liens on top of that and a bunch of other, of

1 course you're going to have credit problems. There's no
2 link to anything that Ocwen did.

3 One of the factors for that is the plaintiff in his
4 deposition -- and you'll hear testimony from him -- said he
5 was aware that his score with Equifax, the one that was
6 doing it wrong, was still higher than the other credit
7 report that wasn't reporting it.

8 So to the extent that Equifax was reporting something
9 it shouldn't have about his past due or foreclosure status,
10 that score is still higher than Experian who's not reporting
11 it. You can't link anything to a causation of what
12 happened.

13 Further, you'll hear testimony about how the plaintiff
14 was denied other accounts. He sought to get credit like
15 there was a Disney credit card that he had applied for. He
16 didn't get it.

17 And the evidence will show that lenders that he applied
18 for denied him without ever even seeing the Equifax report
19 because, as you'd imagine, a credit company doesn't have to
20 rely on just Equifax. There's three. They can choose any
21 one of them.

22 And the evidence will show that he was denied credit by
23 people who never even saw the Equifax report, which is the
24 only one that he's providing any complaint about here.

25 So the damages that the plaintiff is seeking in this

1 case involve denial of credit, which we've touched on, and
2 then, second, emotional distress.

3 The denial of credit -- I just want to highlight these
4 for you. You're going to hear testimony about them. We
5 should be on slide 50.

6 There's five different credit applications that were
7 denied. And I'm going to run through them real quick.
8 We're getting to the finish line.

9 The first two, Comenity Bank and Embrace Home Loans.
10 Those were the two that didn't even look at Equifax. To the
11 extent that this problem is being caused by Equifax, it
12 couldn't have been here. They didn't even see that report.

13 Next, One Community Federal Credit Union. That -- they
14 pulled what's called a tri-merge. It's a combination of the
15 three credit bureaus' reports. And our expert witness,
16 again, will explain that in this situation, Equifax actually
17 had the higher score.

18 And when he was -- he actually wasn't denied. You'll
19 hear testimony by deposition from Mr. Napier. He won't be
20 here today because -- well, I don't need to say why. But in
21 his deposition he states that the application was never
22 completed, that he stopped.

23 And it could have been denied had it been processed for
24 any number of reasons. Again, you have to look at the link.
25 Is there anything that's being caused just because of

1 something Ocwen did in their response. That's the third
2 credit denial.

3 The last two, Quicken Loans mortgage refinance, and
4 then a Chase Bank credit account. The Chase credit account
5 was that Disney credit card. So in those you have a denial
6 because the credit score is too low.

7 And there you'll hear testimony from our expert witness
8 to explain how these credit bureaus score based on a
9 collection of all the furnisher data, how many accounts in
10 collection. And when you have a lot of accounts in
11 collection past due or tax liens, that's going to affect
12 your credit. And that could be the cause of the denial.

13 So it's plaintiff's burden by a preponderance of the
14 evidence to prove that there was a causation. And the
15 evidence will show that he can't prove that.

16 The emotional distress piece, plaintiff will testify
17 that he felt stressed. And he will admit, however, that he
18 had no problems sleeping and he didn't seek medical
19 attention.

20 So the, the following things that have to be proven, as
21 the Court will instruct you about the law, the evidence
22 doesn't support it.

23 And, so, at the conclusion of this case, you're the
24 finders of the facts. You make the decisions after hearing
25 all the testimony and seeing all the evidence. It's up to

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1 you to decide. And I appreciate your patience and service.

2 At the end when you make the decision, if you conclude
3 that plaintiff was unable to prove by preponderance of the
4 evidence any one of those required elements, then the Court
5 will instruct you that you're required to check "no" for
6 liability. And there's a sample of: Was there a
7 preponderance of the evidence to prove those elements? If
8 you're not convinced, then you have to check "no."

9 I thank you for your time and attention.

10 THE COURT: Ladies and gentlemen, at this juncture
11 I'm going to give you your luncheon recess. While you're
12 out, do not discuss this case among yourselves or permit
13 anyone to discuss it with you or in your presence. And
14 please be in your jury lounge at 2:00 this afternoon. We'll
15 begin promptly then.

16 We'll stand in recess.

17 (Recess taken from 12:29 p.m. until 2:03 p.m.)

18 THE COURT: Good afternoon, everyone.

19 Counsel, call your first witness, please.

20 MR. NOLAN: Your Honor, the plaintiff calls David
21 Daugherty.

22 THE COURT: Mr. Daugherty, would you come up and
23 take an oath or affirmation, please.

24 **DAVID DAUGHERTY**, PLAINTIFF, SWORN

25 DIRECT EXAMINATION

David Daugherty - Direct (Nolan)

1 BY MR. NOLAN:

2 Q. Hello, Mr. Daugherty. Could you please introduce
3 yourself to the jury?

4 A. Hello. My name is David Max Daugherty.

5 Q. Tell them, what did you do for a living?

6 A. I was a firefighter for the City of Parkersburg for
7 almost 28 years. I retired as a Lieutenant in 2010.

8 Q. Did you do anything else, any other occupation?

9 A. Yes. I was also an EMT for Saint Joseph's Hospital and
10 the ambulance service, but I worked in the ER there also and
11 I was also -- I had two full-time jobs.

12 Q. Are you still working for those employers?

13 A. No. I retired both places.

14 Q. When did you retire?

15 A. I retired from the ambulance service in 2009, and
16 December 10th of 2010 from the fire department.

17 Q. What's your current source of income?

18 A. I'm on pension from the fire department, and I'm also
19 on disability.

20 Q. Let's talk about your disability. What, what type of
21 injuries led to your disability?

22 A. I've had several. The biggest one occurred from the,
23 an injury on a fire scene back in 1993 where we had a
24 structure collapse and the ceiling came down on us. And I
25 ended up with a concussion and my neck messed up with a

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1 bulging disk at C5.

2 I also had injuries with my rotator cuff. And since
3 I've retired, both my knees have gone bad and they've
4 replaced the left one and it's on schedule to be replaced
5 again.

6 Q. Well, since the injury in 1993, has your health ever
7 been right, so to speak?

8 A. No. That was -- actually, I had a bulging disk from
9 1993 until 2006 when the disk impinged. And overnight I
10 lost the use of my right arm and I had to have surgery.

11 And right after the surgery -- and I can't explain the
12 dates or times. But from 2006 to 2012, I had chronic
13 pneumonia where I could never quite get over it, and
14 frequent stays in the hospital for a week at a time, usually
15 always the week of Christmas there for like three years in a
16 row.

17 I kept getting worse as the years went by where I
18 was -- my health was in really poor shape. I was having
19 trouble breathing. I'd have to walk 50 feet and I'd have to
20 sit down and catch my breath.

21 And finally in 2012 it was diagnosed what was going on
22 that some -- like I say, during the impingement, not the
23 surgery because the surgery went really well. But the nerve
24 to my diaphragm, which is the muscle that goes up and down
25 and makes your lung open and close, is paralyzed in the up

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1 position which is not letting my right lung open up which is
2 a big contributor to why I was having all the pneumonias.

3 Q. So would these medical conditions affect your ability
4 to work at various points during this time period?

5 A. Yeah. I was having to take a lot of sick leave and
6 time off for weeks at a time. And it actually ultimately
7 was the reason why I retired. I loved the jobs I had, but I
8 couldn't keep up with it.

9 The day I actually retired officially -- that
10 December 10th at 8:00 in the morning is my official time I
11 retired. By 3:00 I was admitted to Saint Joe's for a week
12 with pneumonia where I was in that bad a shape.

13 Q. So the health injuries, did they ever cause problems
14 with your ability to make a mortgage payment?

15 A. It caused a lot of problems financially with, with
16 all -- they were sending me to OSU. I was being sent to
17 Morgantown for WVU, Ruby. Yes, it was -- we were having
18 trouble at that time trying to keep up.

19 Q. What specifically was going on in the winter and early
20 spring of 2012 with your health?

21 A. I was having trouble breathing for one. I mean, --

22 Q. And during this period, you got behind on your mortgage
23 due to your inability to work?

24 A. Yeah. I had, I had a really -- the last couple years
25 was really bad where -- you know, I worked in an ER setting

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1 for 26, 27 years and really I wasn't -- I personally didn't
2 think I was -- I'd never said nothing to any of my family.
3 I just kept chugging away. I had a -- my father-in-law was
4 terminal and I was the only one in the family that knew how
5 to take -- to go to Pittsburgh to take him to Pittsburgh
6 Presby. So I was always his transportation even when I was
7 sick.

8 But, yeah, it's really hard to focus and really do
9 anything when you're that sick all the time.

10 Q. So in April of 2012 you were behind on your mortgage,
11 though; correct?

12 A. Yes.

13 Q. Do you recall approximately how far behind you were?

14 A. I was probably three or four months.

15 Q. Were you able to get caught up at that point?

16 A. Yes, we did.

17 Q. What did you do to get caught up?

18 A. We cashed in one of my wife's 401(k) plans to catch up
19 on the home mortgage and pay off the medical bills.

20 Q. Why did you cash out your 401(k) at that time?

21 A. Because we were showing that we were late on the
22 mortgage payments and worried about foreclosure.

23 Q. I want to ask you about the particular -- the house
24 here in general. I'm going to show you what I'd like to
25 mark for identification purposes as Plaintiff's Exhibit

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1 Number 1. Do you recognize the document on your screen?

2 A. Yes, I do.

3 Q. Can you describe what this is?

4 A. This is the deed where I bought the house in 1999.

5 Q. Can you tell us the exact date?

6 A. The 20th of July, 1999.

7 Q. Okay. I'm going to scroll along to the note. This is
8 your signature on the deed?

9 A. Yes, it is.

10 Q. And can you describe what this page of the document is?

11 A. That's showing where I have a balloon payment at the
12 end of the loan, maturity of the loan.

13 Q. And what's your understanding of what a balloon payment
14 is?

15 A. That's the balance of your account that at the end of
16 the balloon when it matures that you have to pay the balance
17 or refinance.

18 Q. Can you identify this page as well?

19 A. That just shows the terms of the loan.

20 Q. So it shows your interest rate?

21 A. Yes.

22 Q. What was that?

23 A. Back 15 years ago a lot of the interest rates was
24 higher. It was 9.75.

25 Q. What was the total amount of the loan?

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1 A. I believe it says \$100,000.

2 MR. NOLAN: Your Honor, we would move to introduce
3 this as Plaintiff's Exhibit Number 1.

4 THE COURT: Any objection, Mr. Manning?

5 MR. MANNING: No objection, Your Honor.

6 THE COURT: All right. In that event, the deed
7 that's been marked as Plaintiff's Exhibit Number 1 will be
8 admitted into evidence without objection and can be
9 published at your discretion.

10 BY MR. NOLAN:

11 Q. Mr. Daugherty, I want to ask you, how did you identify
12 this house?

13 A. Well, this house turns out to be -- my family grew
14 up -- my dad played a big part in that addition that was
15 developed. It was one of the first -- he built one of the
16 first three houses in the addition which is actually about
17 eight houses up from where I live now. He did all -- he had
18 finishing crews. That was what he did back then. He had
19 two different finishing crews and they did large jobs. But
20 they did all the basements and driveways, sidewalks.

21 Q. So you grew up in this neighborhood?

22 A. Yes, I did. When we first moved up there, it was just
23 dirt roads. And by the time we left, it was already
24 starting to get paved.

25 The house that I'm living in now that I bought, I

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1 was -- it belonged to a bank president. And when I bought
2 the house, because I worked at the hospital, I was always
3 real concerned about getting older because I knew that was
4 the house I was wanting to stay in.

5 And when we would go out looking at houses, I'd always
6 be going down the hallways with my hands out thinking was it
7 wide enough to make a turn with the ambulance cot because I
8 didn't want anyone carrying me out. But I was wanting to
9 make sure that if they had emergency access, they could get
10 in all the rooms.

11 And it's a tri-level home but the steps aren't very
12 steep and they're not very many and a perfect home for
13 somebody to get older in.

14 Q. You mentioned getting older. How about in your past?
15 How long have you been in this house now?

16 A. Well, we've been in it 18 years I believe.

17 Q. And why was this house the right house for you guys
18 besides the reasons you just gave us?

19 A. Well, this house, it's a great neighborhood. I've got
20 great neighbors. I've got really good access. All the
21 family events occurs at this house, my house, my wife's
22 house. All the holiday events -- always in the past before
23 this house we'd have to go spend half the day with my, my
24 family because there wasn't enough room to -- and even then
25 you'd end up eating in different rooms a lot of times

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1 because there would be enough people there. And the same
2 way, we'd have to go spend the other half with my in-laws.

3 And when we bought this house, we had everybody come
4 together. All the holidays would be at our house,
5 Christmas, Thanksgiving, New Year's, pretty much any
6 function because we had the room. Our family room -- from
7 being in the fire department, I was actually one of the
8 cooks already on the fire department.

9 One of the nicest things I could always remember was
10 during the holidays, especially Thanksgiving, that's the
11 only time that all six stations in Parkersburg all come
12 together. Usually they don't let them come out of their
13 territories. But they let us for Christmas to have our
14 Christmas dinner together. And we'd have one table all the
15 way across where we could all sit down and eat together.

16 Well, we started doing the same thing at my house where
17 the in-laws and my family could all sit at the same table
18 and it actually makes it a lot more family like.

19 MR. MANNING: Your Honor, I'm sorry to interrupt.
20 I just noticed that one of the witnesses came in and I just
21 wanted to verbally request a motion to sequester witnesses.

22 THE COURT: I'll grant the motion to sequester,
23 counsel, with the exception of expert witnesses. You
24 lawyers need to advise your witnesses that they are to
25 remain outside of the courtroom until they have testified,

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1 and further that they are not to relate the questions that
2 were asked or the testimony that was given to any witness
3 who is yet to testify.

4 MR. NOLAN: Yes, Your Honor. This is our expert
5 witness.

6 THE COURT: All right. Further objection?

7 MR. MANNING: Judge, I believe in the interest of
8 making sure that the experts aren't being influenced in
9 their testimony that they should be sequestered as well.

10 THE COURT: All right. I overrule that objection.
11 As you lawyers know, the experts generally give their
12 testimony based on facts which you all have provided from
13 depositions, which are oftentimes the same testimony that
14 they're hearing here in court. They use those facts in
15 arriving at their expert opinions that you all call upon
16 them to give.

17 And for those reasons, it's my practice to allow
18 experts to remain in the courtroom. I find that they are
19 not unduly influenced because, generally speaking, they have
20 heard deposition or reviewed deposition testimony of most
21 all of the witnesses who are going to testify in formulating
22 their opinions.

23 I preserve the defendant's objection and exception to
24 that ruling, but that is my practice.

25 MR. MANNING: Thank you, Judge.

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1 THE COURT: Go ahead, please.

2 THE WITNESS: Are you wanting me to finish talking
3 about the house?

4 BY MR. NOLAN:

5 Q. So you were discussing your family and the home.

6 A. Yes. You know, I raised both of my kids. Now I have
7 three grandkids with my daughter and they live close. So
8 they spend a lot of time with us.

9 All the neighbors are really good neighbors. We're not
10 butted up against each other, and we actually look after
11 each other's pets. We're a close-knit neighborhood. It's a
12 place I've -- the minute I moved there, and in the back of
13 my mind I always wanted to live back in that neighborhood.
14 And when I had that opportunity, I took that and --

15 Q. How long do you intend to stay in this home?

16 A. I don't plan on ever moving is what I was actually
17 hoping.

18 Q. Okay. So when did you begin to focus on your credit
19 report?

20 A. In 2012. Actually, I started focusing on it because I
21 knew we had to get all these past debts straightened up.
22 But I wasn't aware of it until I applied for a mortgage
23 loan.

24 Q. So --

25 A. I wasn't aware of a problem.

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1 Q. And what was your understanding of how you needed to
2 prepare for the note?

3 A. That I would have had to have all my debts caught up
4 and paid off, which we did.

5 Q. Did you hire any advisors at this time?

6 A. I believe I might have hired Lorin Hanks to help out,
7 but --

8 Q. How did you come to find Lorin Hanks?

9 A. I looked up credit repair companies on the internet
10 that had good references, ratings.

11 Q. Before you hired him, did you have any discussions with
12 Mr. Hanks?

13 A. Yes, I did.

14 Q. What did you talk about?

15 A. We talked about -- we talked about my credit, things
16 that were on my credit record. He had told me that things
17 that I still owed for that I would have to pay off, which I
18 did.

19 And I believe he even told me, "If you owe it, you've
20 got to pay it." It's not a quick way to cheat somebody out
21 of money by having a credit repair company. That's -- they
22 work on things that shouldn't be on there that's outdated.

23 But he told me -- I thought Lorin was on the up and up
24 when he told me that I needed to pay certain things. And he
25 kept in contact with me each month that he was submitting

1 certain disputes.

2 Q. So what was your involvement in his day-to-day work?

3 A. I had none.

4 Q. So you left that to him?

5 A. Yes.

6 Q. Okay. Did you ever see any of the disputes he created?

7 A. No.

8 Q. He didn't run those by you for approval?

9 A. (Nodded negatively)

10 Q. Did you enroll in any credit monitoring programs?

11 A. Yes, I did.

12 Q. What did you enroll in?

13 A. Creditscore.com.

14 Q. And what kind of program was that?

15 A. That was a program where I'd pay a monthly fee and
16 actually I could see the reports each month. And they'd
17 also send you credit alerts if there was any problems.

18 Q. How would they send you those?

19 A. By e-mail.

20 Q. And, so, you talked about when you first discovered
21 Ocwen was a potential issue on your credit. When was that?

22 A. March, March 12th, 2013.

23 Q. What happened that day?

24 A. Well, that's where I was contacted by the mortgage
25 company when I --

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1 Q. Do you recall which company?

2 A. I don't recall. I think it might have been Quicken
3 Loans, but I'm not sure which one it was early on. But I
4 submitted an application, which your mortgage payment had to
5 be up-to-date for so many months. And they called me back
6 and said, "Mr. Daugherty, I thought you said you're current
7 on your mortgage." And I said, "Yes, I am."

8 And they said, "This month right now is showing you 120
9 days late." I said, "No, I'm not. I can go right on-line
10 with the Ocwen statements where you can look at your account
11 and I'm current." And they said, "No, it's showing that
12 you're past due."

13 So I called, I called Ocwen at that point. And they
14 said, "No, Mr. Daugherty, you're current." And I said,
15 "Well, that's not what my credit report is showing." And I
16 asked if they could help clear this up and they said they,
17 they wouldn't. They told me that was between me and the
18 credit reporting company.

19 Q. I'd like to mark this for identification purposes as
20 Plaintiff's Exhibit Number 2. Do you recognize this
21 document, Mr. Daugherty?

22 A. Yes, I do.

23 Q. Can you tell us what this is?

24 A. That's a letter I believe I sent two days later on the
25 14th.

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1 Q. How did you send it? Did you mail it or fax it?

2 A. I can't -- I believe I faxed it.

3 Q. Okay. And who did you fax it to?

4 A. To Ocwen Research Department. And that was one of the
5 things that came out of our phone call on the 12th when I
6 was talking to them that they said that I'd have to send the
7 complaint or dispute to their Ocwen Research Department for
8 them to get it.

9 Q. Did you attach anything to this?

10 A. Yes. I attached the --

11 Q. Is this what you attached?

12 A. -- the line item on the credit report to show them it
13 shows I'm late.

14 Q. This page, the second page?

15 A. Okay. Yeah, this isn't -- I'm trying to read the
16 screen.

17 Q. So the first page has your letter and the second page
18 you attach this tradeline; correct?

19 A. Right.

20 Q. All right.

21 MR. NOLAN: I would move for the admission of
22 Plaintiff's Exhibit 2 at this point, Your Honor.

23 THE COURT: Mr. Manning, any objection?

24 MR. MANNING: Yes, Judge.

25 THE COURT: All right. Basis?

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1 MR. MANNING: It's hearsay and it's an
2 out-of-court statement offered for the truth of the matter
3 asserted, specifically Page 2. It's only by this witness's
4 testimony a portion of something else from somebody else.
5 And he's not in a position to lay a foundation as to what it
6 is, what it means or --

7 THE COURT: All right. I'm sorry. I didn't mean
8 to cut you off, Mr. Manning. I thought you were done.

9 MR. MANNING: I'm done, Judge.

10 THE COURT: Repeat your last few words for me. I
11 was talking and I didn't hear them.

12 MR. MANNING: Foundation. He's not in a position
13 to lay the foundation for what this document, this partial
14 excerpt, what it is, what it means or who it's from.

15 THE COURT: All right. The objection, counsel, is
16 that it's hearsay. Is it being offered for the truth of
17 what's contained in it?

18 MR. NOLAN: Your Honor, it's being offered to show
19 that this is what he provided to Ocwen at this point. It's
20 not being offered for the truth of the matter. It's the
21 steps the plaintiff took at this point.

22 THE COURT: All right.

23 MR. NOLAN: It comes, as you can notice, from the
24 Bates stamp, Ocwen's discovery. They had received it in
25 their files.

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1 THE COURT: Mr. Manning, because it is not being
2 offered for the truth of what's contained in the letter, I
3 overrule the hearsay objection, preserving the defendant's
4 objection and exception.

5 I allow this document to show what the defendant did,
6 Mr. Manning, based on your -- or, Mr. Nolan, based on your
7 representation.

8 MR. NOLAN: Thank you, Your Honor.

9 MR. MANNING: Thank you, Judge.

10 THE COURT: Yes, sir.

11 MR. NOLAN: At this point, we'd like to publish it
12 to the jury.

13 THE COURT: All right. First, Plaintiff's Exhibit
14 2 will be admitted into evidence, preserving the defendant's
15 objection and exception, and can be published at your
16 discretion.

17 BY MR. NOLAN:

18 Q. Mr. Daugherty, can you read this letter?

19 A. Yes. It says:

20 "Dear sir, I am writing you concerning my credit report
21 with Equifax. It states that I'm currently behind \$6,128
22 with Ocwen Loan Services and that I am in foreclosure.
23 Please correct those records as soon as possible. I have a
24 professional company assisting fixing my credit past so
25 please clear that record. Thank you, David M. Daugherty."

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1 Q. Is this the page you attached to your letter?

2 A. Yes.

3 Q. And what was your intent with that letter which you
4 were attaching?

5 A. I was hoping that they could see that the dates was
6 wrong, and I was just wanting this fixed so I could go ahead
7 and refinance my house.

8 Q. Did you hear back from Ocwen after you sent this
9 letter?

10 A. Yes, I did.

11 Q. When did you hear back from them?

12 A. I believe March 18th.

13 Q. And we'll move on to our next exhibit.

14 MR. NOLAN: I'd like to mark this for
15 identification purposes as Plaintiff's Exhibit Number 3.

16 BY MR. NOLAN:

17 Q. Mr. Daugherty, do you recognize this letter?

18 A. Yes, I do.

19 Q. Can you tell us what it is?

20 A. That is the response from Ocwen saying they -- this is
21 their response to that communication that I had with Ocwen.

22 Q. And you received it on or about March 18th?

23 A. Yes, on March 18th.

24 MR. NOLAN: Your Honor, I'd like to move for the
25 admission of Plaintiff's Exhibit Number 3.

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1 THE COURT: Mr. Manning, objection?

2 MR. MANNING: Judge, the Plaintiff's Exhibit 3
3 that I was given is different.

4 MR. NOLAN: Your Honor, I believe I moved the
5 admission and we're waiting for Mr. Manning's response.

6 THE COURT: Mr. Manning, objection?

7 MR. MANNING: I'm not sure what the document is
8 being offered for. It is a hearsay document. It's a
9 third-party out-of-court statement. If it's being offered
10 for the truth of the matter asserted, then it would be
11 hearsay and it's objectionable.

12 THE COURT: It's a response from Ocwen or Equifax?

13 MR. MANNING: It's a response from Ocwen.

14 THE COURT: All right. Any response before I
15 rule?

16 MR. NOLAN: It's a statement by a party opponent,
17 Your Honor.

18 THE COURT: Under Rule 801 it would not be
19 considered to be hearsay. I overrule the objection. I will
20 admit Defendant's (verbatim) Exhibit Number 3, preserving
21 Ocwen's objection and exception.

22 MR. MANNING: Thank you, Judge.

23 THE COURT: Yes, sir.

24 MR. NOLAN: May I publish this to the jury,
25 please?

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1 THE COURT: Yes, sir.

2 BY MR. NOLAN:

3 Q. Now, Mr. Daugherty, can you tell us how they summarized
4 your concern?

5 A. Well, from what I understand on this, this is saying
6 that they actually -- they thanked me for my communication
7 and they actually say that they have it wrong here. They
8 have it March of 2012 when I told them originally 2013 was
9 my concern.

10 Q. So you never complained about March, 2012, to them?

11 A. No.

12 Q. And then the remainder of this letter they tell you
13 that you were, in fact, in foreclosure in March, 2012;
14 correct?

15 A. Yes.

16 Q. Which we've discussed when you cashed out your 401(k)
17 at that point?

18 A. Yes.

19 Q. And you weren't disputing that; correct?

20 A. No, I was not disputing that.

21 Q. Can you read this last sentence for us at the indented
22 paragraph?

23 A. "As of this date"?

24 Q. Yes, please.

25 A. "As of this date of this letter, the loan is due for

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1 the March 26, 2013, payment. For any further concerns
2 regarding the loan, please contact our Customer Care Center
3 at 1-800, or (800)746-2936."

4 Q. So they confirmed you're current; correct?

5 A. Well, they said I'm current right there, yes.

6 Q. Okay. But that wasn't your concern in your letter to
7 them?

8 A. No.

9 Q. And, now, just for clarity sake, you did have an issue
10 with your March, 2013, payment at that time; right?

11 A. Yes, sir.

12 Q. What happened with that?

13 A. There was a glitch with my automated pension going into
14 my pension. It didn't go in when it should have. And I
15 went ahead and paid it by phone. And by the time I found
16 out that it was rejected -- when I found out it was
17 rejected, I went ahead and I made it immediately.

18 Q. So would it be accurate for Ocwen to say you were 30
19 days late in March, 2013?

20 A. It probably would be.

21 Q. But not 120?

22 A. No.

23 Q. Okay. So when was the next contact you had with Ocwen?

24 A. I believe around March 17th, 2014.

25 Q. What was that?

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1 A. Once again, I called them because my --

2 Q. Why did you call Ocwen in March of 2014?

3 A. Because I got -- I was running out of options. I
4 called to try to get, request help. My credit report every
5 month for 2013 wasn't correct.

6 Q. So what did you discuss on the phone with Ocwen at this
7 point?

8 A. I discussed the entire matter on the phone as far as
9 all the months that I was being shown that I was late. And
10 it was actually making things worse because they just kept
11 tacking them on.

12 Q. What was the response?

13 A. They weren't going to help me. I requested help and
14 they wouldn't assist me in any way.

15 Q. Did they ask you to write another letter?

16 A. I don't recall if they asked me to write a letter, but
17 I did write another letter.

18 Q. When would you have sent that letter?

19 A. March 19th, 2014, two days later.

20 Q. If you take a look at your screen, is this the letter
21 that you sent at that time?

22 A. Yes.

23 Q. Was anything attached to this letter?

24 A. Yes. I attached a credit report.

25 Q. Is this the credit report you attached?

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1 A. Yes.

2 Q. This is the fax cover page?

3 A. Yes, it is.

4 MR. NOLAN: Your Honor, I'd like to mark for
5 identification purposes Plaintiff's Exhibit Number 4.

6 THE COURT: Yes, sir.

7 MR. NOLAN: And at this time, we'd like to move
8 the admission of Plaintiff's Exhibit Number 4.

9 THE COURT: Mr. Manning, any objection?

10 MR. MANNING: Your Honor, I would have an
11 objection to the third page of the document which appears to
12 be an excerpt of something from a third party. It's
13 incomplete. And if it's being offered for the truth of the
14 matter asserted, it should not be admitted.

15 THE COURT: Response to the objection, counsel?

16 MR. NOLAN: It's the same as his last letter, Your
17 Honor. He's not offering it for the truth of the matter.
18 He's offering it to show the steps that he took to inform
19 Ocwen of his concerns and what he attempted to show them.

20 THE COURT: All right. And the third page that
21 Mr. Manning refers to as containing an incomplete document,
22 does it represent what was actually sent with the letter?

23 MR. NOLAN: Yes, Your Honor.

24 THE COURT: All right. In that event, I overrule
25 the objection for the reasons I've previously stated. It's

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1 not being offered for the truth of the matter stated.

2 And apparently, based on counsel's representation, it
3 is an accurate representation, Mr. Manning, of what was
4 actually sent with that letter, even though that document
5 may be incomplete as you've indicated.

6 MR. MANNING: Thank you, Judge.

7 THE COURT: I preserve Ocwen's objection and
8 exception to my ruling.

9 MR. NOLAN: Thank you, Your Honor, if we could
10 publish the exhibit at this time.

11 THE COURT: Exhibit 4 will be admitted and can be
12 published at your discretion, preserving the defendant's
13 objection.

14 BY MR. NOLAN:

15 Q. So this is the letter you sent --

16 A. Yes, it is.

17 Q. -- in March of 2014? Can you read this letter for us,
18 Mr. Daugherty? I know it's long, but I think --

19 A. Not from this distance. Okay.

20 "Dear sir: This letter is to complain about the
21 service I recently received from Ocwen Loan Servicing and
22 Equifax for this past year. Ocwen has my mortgage account
23 7092244537 that matures July, 2014, with a balloon payment
24 due at that time. That will require me to refinance my
25 mortgage with the balance of \$80,000.

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1 "I have been working to secure a loan and came across
2 in my credit report problems with the reporting of
3 information on my account. Equifax has placed information
4 on my credit report stating my account with Ocwen was 120
5 days late in the month of March, 2013. They show it was 120
6 days late in the months of June and July, 2013. They show
7 it was 120 days late in the month of October, 2013, and
8 December of 2013.

9 "These statements are completely false. Equifax also
10 shows that I have a past due balance right now of \$6,128. I
11 sure can see why I'm having problems securing a new loan. I
12 noticed on my account that there is no account statement
13 listed on your website for June and July of 2013.

14 "I was late in March, 2013, when Ocwen's payment did
15 not go through because my automatic payroll deposit did not
16 go in the accounts on time, but it was paid the same day
17 that that was realized.

18 "I have disputed these reporting inaccuracies with
19 Equifax several times and that they claim they are correct.
20 I also have a complaint with the total mortgage debt listed
21 by Equifax showing that we owe a total of \$168,750. We paid
22 \$105,000 originally for the house. I really appreciate
23 those numbers too.

24 "My house has a value of \$165,000 so I can understand
25 why the negative reporting could be coming from becoming a

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1 tool -- excuse me. I can understand why the negative
2 reporting could be coming from Ocwen. I can only imagine
3 Ocwen would want to have this corrected as soon as possible
4 if the company is innocent.

5 "I had a consultation with a consumer credit attorney
6 who advised me to send Ocwen and Equifax notice that my
7 rights concerning consumer credit are being extremely
8 slighted.

9 "Ocwen should immediately update all three credit
10 agencies concerning my account and send letters to me
11 showing this. I am planning to file a lawsuit if these
12 inaccuracies cause a problem with the refinancing process
13 with my house. Sincerely," I believe it was cut off after
14 that, "David M. Daugherty."

15 Q. Did you attach anything to this letter?

16 A. Yes. I attached that credit report with all the arrows
17 where I showed that was all inaccurate that they had placed
18 on that account. And also I circled the balance of \$168,750
19 which was also inaccurate.

20 Q. This is your handwriting on the document?

21 A. Yes, where it says "inaccurate" both times with the
22 arrows and the circles, yes.

23 Q. And you sent this via fax?

24 A. To the Ocwen Loan Research Department.

25 Q. Did you send it any other way?

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1 A. Actually, I sent that registered mail.

2 Q. So in this week, you've called them. You've faxed them
3 a letter. You've mailed them a letter.

4 A. Yes.

5 Q. Did you communicate with anyone else at this point?

6 A. Yes. After that, I communicated with Consumer Credit
7 Counseling in Parkersburg just to get advice because I
8 couldn't get this off my record. And they advised me to get
9 in contact with the Consumer Protection Agency over consumer
10 rights violations. It's a government agency in Washington,
11 D.C.

12 Q. The feds?

13 A. The feds.

14 Q. And did you reach out to the Consumer Financial
15 Protection Bureau?

16 A. Yes, I did.

17 Q. And what, what was your discussion with them like?

18 A. I talked to a lady at first on the phone and she
19 actually told me to send her the information. When I sent
20 her the information, I faxed her the information, she told
21 me my consumer rights were being violated and these were
22 federal charges. And she advised me to go ahead and file a
23 complaint against Ocwen or dispute with Ocwen.

24 Q. So you recall submitting a dispute to the Consumer
25 Financial Protection Bureau?

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1 A. Yes, sir.

2 THE COURT: Is there an objection, Mr. Manning?

3 MR. MANNING: Yes, Judge. I couldn't tell if the
4 witness was trying to testify about what the CFPB said or if
5 it was somebody else. If it's the CFPB that he's purporting
6 to represent he had a conversation and they told him
7 something, then that's hearsay and would be inadmissible.

8 THE COURT: Response to the objection, counsel?

9 MR. NOLAN: I believe he probably did talk about
10 his conversation with the CFPB.

11 THE COURT: My recollection of his testimony is
12 that he was told by them to file an action, if I remember
13 correctly.

14 And, ladies and gentlemen, I am going to order that you
15 disregard that portion of the answer that was given by the
16 witness.

17 MR. MANNING: Thank you, Judge.

18 THE COURT: Yes, sir.

19 BY MR. NOLAN:

20 Q. But you did send documents to the CFPB; correct?

21 A. Yes, I did.

22 Q. If we could un-publish this exhibit, we'll go on to the
23 next. Do you recall when that was? When did you send
24 information to the CFPB? Do you recall?

25 A. That was in, I believe, March.

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1 Q. And this document on the screen, is that the
2 information you provided to them?

3 A. Yes. It's basically almost the same letter that I'd
4 sent Ocwen earlier.

5 Q. How long did it take you to write that letter?

6 A. Probably 20 minutes. I was kind of angry when I wrote
7 it. It didn't take very long.

8 Q. It wasn't a hard letter to write?

9 A. No. I was angry when I, when I wrote it. So I -- it
10 didn't take very long. I usually do better.

11 Q. And is this document I'm showing you here, is this the
12 electronic file that the CFPB maintains of your dispute?

13 A. Yes.

14 Q. Can you tell us all what's included in this response
15 and this file? So does this file contain your initial
16 complaint to the CFPB?

17 A. Yes.

18 Q. Does it contain anything else?

19 A. It shows what my current balance is.

20 Q. Did anyone respond to your complaint?

21 A. Yes. I believe I got another memo saying that it had
22 been investigated.

23 Q. And does this file contain the response? The page
24 we're looking at, the bottom, can you see who was the
25 respondent on that?

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1 A. Yeah, okay. That was the response from Ocwen.

2 Q. This file contains your complaint and Ocwen's response?

3 A. Which they still didn't correct the mistake that I was
4 complaining about.

5 MR. NOLAN: I'll mark this for identification
6 purposes Plaintiff's Exhibit 5.

7 BY MR. NOLAN:

8 Q. So it contains your complaint and Ocwen's response.
9 Did you have another response included on this?

10 A. Yes, I did.

11 Q. And what date was that?

12 A. The 17th.

13 Q. Of?

14 A. Of April.

15 Q. And that's -- is that solely your statement?

16 A. Yes.

17 Q. Did anyone else provide input on your statement at that
18 point?

19 A. No.

20 MR. NOLAN: Your Honor, at this time we'd like to
21 move the admission of Plaintiff's Exhibit Number 5.

22 THE COURT: Mr. Manning?

23 MR. MANNING: Your Honor, it's represented as a
24 CFPB document, but it does contain an Ocwen response within
25 it. So I don't have any objection to this document.

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1 THE COURT: All right. In that event, Plaintiff's
2 Exhibit 5 will be admitted into evidence without objection
3 and can be published at your discretion, counsel.

4 MR. NOLAN: Thank you, Your Honor.

5 BY MR. NOLAN:

6 Q. This document is a little bit out of order, so I'm
7 going to try and help us keep it the right chronology here.
8 So here is your initial complaint; correct?

9 A. Yes.

10 Q. Under the heading "what happened."

11 A. Yes.

12 Q. And this complaint, you go on for a page and a half
13 here. Again, this is similar to your letter you sent to
14 Ocwen you stated?

15 A. Yes, it was.

16 Q. And, so, then thereafter this was sent to Ocwen. Who
17 provided a response?

18 A. I believe it was Ocwen.

19 Q. Did Ocwen's response address your concerns?

20 A. Well, they didn't correct them.

21 Q. And, so, there was the Ocwen response. And here I want
22 to indicate -- was this your follow-up after Ocwen's
23 response?

24 A. Yes.

25 Q. Can you read that, please, for the jury?

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1 A. Okay. "I sent Ocwen a copy of my Equifax report. It
2 shows me being currently past due \$6,128 and being late 120
3 days in the months of March, June, July, October, and
4 December. I understand Equifax is now showing my loan as
5 current, but they still show me being late 120 days all of
6 those months. There is no way I can be satisfied with this
7 as my loan will mature in July with Ocwen demanding a
8 balloon payment for the balance. It appears neither Ocwen
9 or Equifax is going to cooperate at this time and it is a
10 real issue to obtain a loan in time."

11 Q. Did you ever hear back from the CFPB after this?

12 A. Actually, I remember I talked to the lady there at
13 consumer protection and --

14 Q. Talked to her on the phone?

15 A. Yes.

16 Q. What did you tell her?

17 A. I told her still they're not fixing this with the
18 response.

19 Q. But as far as -- she never sent you anymore letters?

20 A. I can't recall right off.

21 Q. Do you know if they followed up in any way after this?

22 A. Not that I can recall.

23 Q. Okay. And, so, at this point we are in April 17th of
24 2014. When is the next time you hear from Ocwen?

25 A. I'm wanting to think it was in May. I also had -- I

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1 might have received one of my notices at that point too as
2 far as the balloon payment coming up.

3 Q. Let me ask you to look at this document. Do you
4 recognize this document, Mr. Daugherty?

5 A. Yes.

6 Q. Please tell us what this letter is.

7 A. This is just another letter that, like the other ones
8 where, just thanking me for the opportunity to, for my
9 recent communication regarding the above-referenced loan.
10 It says, "We appreciate the time and effort on your part to
11 bring your concern to our attention."

12 Q. And, so, what was their concern they claimed to address
13 in this letter?

14 A. Could you repeat that?

15 Q. What was the concern they claimed to address in this
16 letter?

17 A. It says I requested to remove delinquent reporting
18 reference in my correspondence.

19 Q. And what delinquency do they specifically address in
20 this letter?

21 A. The one, March of 2013.

22 Q. Did you ever complain about the March, 2013, --

23 A. No, not -- no.

24 Q. What were you complaining about?

25 A. The ones that were all marked 120 days late.

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1 Q. And that's the letter you sent them showing what you
2 were complaining about?

3 A. Yes.

4 Q. And this is the response you received?

5 A. Yes.

6 Q. And now they indicate on here that they submitted a
7 request for Ocwen's payment reconciliation history to be
8 sent to your attention which reflects all credits and
9 disbursements. Did that address your concern?

10 A. No, it didn't correct my concerns, no.

11 MR. NOLAN: Your Honor, we move for the admission
12 of Plaintiff's Exhibit Number 6.

13 THE COURT: Mr. Manning, objections to Number 6?

14 MR. MANNING: No, Your Honor.

15 THE COURT: All right. Plaintiff's Exhibit Number
16 6 will be admitted into evidence without objection and can
17 be published at your discretion.

18 BY MR. NOLAN:

19 Q. So what's the next time you heard from Ocwen?

20 A. I believe, I believe in May for one. But I also --
21 somewhere in that time I had that letter I mentioned that,
22 to let me know that the balance or the balloon payment was
23 coming due.

24 Q. They're sending you reminder letters about your balloon
25 note --

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1 A. Yes.

2 Q. -- in case you forgot?

3 A. Yes.

4 Q. How did that feel when you got those letters?

5 A. It started to sink in things weren't working out very
6 well for this. And it was almost going to panic mode at
7 this point.

8 Q. Did you need to be reminded your balloon was coming
9 due?

10 A. No, I didn't need to be reminded because I worried
11 about it all the time. But I -- to go that long with it, I
12 always thought that this would be a simple correction to be
13 fixed. I'd get to refinance and just move on and not -- I
14 never thought it would be this big of a problem, this many
15 months.

16 Q. When is the next time you spoke with Ocwen? Was it a
17 phone conversation?

18 A. Yes. I believe June 9th I believe.

19 Q. What did you talk about on June 9th?

20 A. I think June 9th is when I was trying to refinance
21 again with One Community Federal Credit Union. And they
22 were telling me that we needed to get that fixed as far as
23 this being reported and foreclosure for them to approve the
24 loan.

25 And I called pleading and requesting a letter from

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1 Ocwen to at least state -- because they're telling me it's
2 current each time and I'm saying it's not, and they're
3 telling me it's current. So I'm telling them, "Well, if
4 it's current, can you not send me a letter saying that it's
5 current and that I'm not in foreclosure?" And they refused
6 to help with that.

7 Q. They disregarded your request for a letter?

8 A. Yes. And it was a lengthy conversation.

9 Q. After they had disregarded your --

10 A. Yes.

11 Q. -- complaint with the circles and the arrows?

12 A. Yes.

13 MR. MANNING: Objection, leading.

14 THE COURT: The objection to leading is sustained.

15 BY MR. NOLAN:

16 Q. And had you been applying for credit during this time
17 period?

18 A. Which, which time period are you talking about?

19 Q. March, 2013, to July, 2014.

20 A. Yes. I've been trying to find different ways to find
21 financing.

22 Q. Is the letter on the screen one of those times?

23 A. Well, that was over a credit card.

24 Q. Did you apply for a credit card during this time?

25 A. Indirectly.

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1 Q. And this one --

2 A. As in my deposition, which Mr. Manning knew.

3 Q. This is for the Disney Book of the Month Club I
4 believe. Is that what's on your screen here?

5 A. Yes.

6 Q. And did you receive this notice?

7 A. Yes.

8 Q. How would you have received this?

9 A. This came in the mail.

10 Q. And you just received the mail and opened it?

11 A. Yes.

12 Q. And what's this letter say?

13 A. It says -- basically thanking me for an interest in a
14 Disney --

15 MR. MANNING: Objection, Your Honor. This is
16 hearsay. This is a third-party document.

17 THE COURT: Response, counsel?

18 MR. NOLAN: Your Honor, he received this at his
19 house and we're offering it for its effect on Mr. Daugherty,
20 not for the truth of the matter asserted. When he's
21 receiving this correspondence, what is the effect on
22 Mr. Daugherty, how does he internalize it, how does he feel
23 about it. And it goes directly to his damages.

24 THE COURT: Response, Mr. Manning. Anything
25 further?

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1 MR. MANNING: Well, the third party that sent this
2 isn't here to tell us what it is, what it meant. For
3 Mr. Daugherty to attempt to interpret it is raw speculation.
4 And it is a third party, so it's certainly not for the truth
5 of the matter but it's not a reliable piece of evidence
6 regardless.

7 THE COURT: Well, I overrule the objection. It
8 has been represented, of course, it's not being offered for
9 the truth of the matter, but being offered to, towards
10 damages in terms of its effect on him.

11 And I think that he can testify to that, Mr. Manning.
12 Even if his interpretation of the letter would be different
13 than the interpretation of the writer, his interpretation is
14 what matters when it comes to its impact on him.

15 So for that reason, I overrule the objection,
16 preserving the defendant's objection and exception.

17 MR. MANNING: Thank you, Judge.

18 MR. NOLAN: Your Honor, at this time we'd like to
19 move the admission of Plaintiff's Exhibit Number 7.

20 THE COURT: I will admit Plaintiff's Exhibit
21 Number 7 for the purpose that has been outlined here on the
22 record by you, Mr. Nolan, preserving the defendant's
23 objection and exception to it for that limited purpose.

24 MR. NOLAN: Thank you, Your Honor.

25 BY MR. NOLAN:

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1 Q. So can you again describe what this letter is,
2 Mr. Daugherty?

3 A. This is actually a, a letter from the Disney Visa
4 Platinum Credit Card from Chase Bank. And it's actually
5 saying the credit application has been turned down. It
6 says, "You have a foreclosure, repossession, or early lease
7 termination and balance in accounts are too high compared to
8 credit limits."

9 Q. Mr. Daugherty, are you a Disney fan?

10 A. Well, first off, I didn't do this application. I
11 wasn't aware of it. My wife submitted this application.

12 Q. Your wife is a Disney fan; right?

13 A. My wife is a Disney fan. When they asked -- when Mr.
14 Manning showed this to me in my deposition, I told him, no,
15 I didn't do an application for Disney. And --

16 Q. But when your wife applied in your name, were you able
17 to get credit?

18 A. No.

19 Q. Couldn't get the Disney movies to watch.

20 MR. NOLAN: I'd like to mark for identification
21 purposes Plaintiff's Exhibit Number 7.

22 THE CLERK: Mr. Nolan, we already did 7.

23 MR. NOLAN: Number 8. Excuse me.

24 Your Honor, may I approach the witness to hand him the
25 exhibit?

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1 THE COURT: Yes, sir.

2 BY MR. NOLAN:

3 Q. Do you recognize this document, Mr. Daugherty?

4 A. Yes.

5 Q. Can you tell us what that document is?

6 A. This is where I was turned down. It's the response on
7 May -- the letter came May 21st. It was a bill-me-later
8 payment method on 5-11, 2014. And it was turned down with
9 the report from Equifax.

10 Q. And you received this letter in the mail?

11 A. Yes, I believe so.

12 MR. NOLAN: Your Honor, we'd like to move the
13 admission of Plaintiff's Exhibit Number 8 at this time.

14 THE COURT: Mr. Manning, objection?

15 MR. MANNING: Similar objection, Judge. It's a
16 third-party document. It can't be admitted for the truth of
17 the matter and there's no foundation for it.

18 THE COURT: All right. I overrule the objection
19 essentially for the reasons that I overruled the objection
20 as to Plaintiff's Exhibit Number 7. The witness has
21 indicated that he received the document. If it's being
22 offered for that purpose -- and I may have jumped the gun.
23 I apologize to you, Mr. Nolan. Is that the purpose or not?

24 MR. NOLAN: It's just that he received the
25 document and the effects it had on him.

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1 THE COURT: The same as Plaintiff's Exhibit 7?

2 MR. NOLAN: Correct, Your Honor.

3 THE COURT: All right. I overrule the objection
4 then for that reason, Mr. Manning, preserving the
5 defendant's objection and exception. It can be published at
6 your discretion.

7 MR. MANNING: Thank you, Judge.

8 MR. NOLAN: May we publish this, please?

9 BY MR. NOLAN:

10 Q. Now, who is the bank at the top of this page?

11 A. Can you blow that up just a hair more? This is from
12 Comenity Capital Bank.

13 Q. And this letter denies you credit?

14 A. Yes.

15 Q. And what credit reporting agency does this letter state
16 that it relied on?

17 A. Equifax.

18 Q. Now, didn't we hear earlier in openings that Comenity
19 didn't look at your Equifax report?

20 A. That's what we understood.

21 Q. And do you know what you were applying for with this
22 credit application?

23 A. Actually, I don't recall.

24 Q. Is this indicative of the success you were having
25 applying for credit during this time period?

1 A. Yes.

2 Q. Were you able to get credit anywhere?

3 A. Pretty much I couldn't get credit to buy a hotdog. I
4 mean, I couldn't get any kind of credit.

5 Q. And, now, during openings we heard about your tax
6 liens. I want you to tell me where did these tax liens come
7 from?

8 A. When -- during my illnesses and when we fell behind on
9 the mortgage payments, we cashed in the 401(k) to catch up
10 on the mortgage payments. And one of the things that we
11 weren't really counting on, it turned out that we ended up
12 having a large liability with the State of West Virginia on
13 our income tax.

14 Q. For withdrawing the 401(k)?

15 A. Yes.

16 Q. And how were you planning to resolve this tax lien
17 issue?

18 A. Well, that was early on in 2013 before taxes when we
19 realized that we were going to have this liability. And the
20 solution was to go ahead and refinance the house. And since
21 I had \$80,000 in equity in the house, we'd just go ahead and
22 take out enough to pay off the liability.

23 Plus, at the same time we knew that the balloon balance
24 was coming up, so we -- and with the interest rate I had
25 back then, the one that I was looking at --

1 Q. Back then you had the nine percent; correct?

2 A. Right. And it would probably save me \$200 or \$300 a
3 month with the new rate.

4 Q. Even with paying off the tax liens?

5 A. Yes.

6 Q. When did the tax liens first appear on your credit? Do
7 you know?

8 A. I believe it was in around April, 2014.

9 Q. That's over a year after you started disputing with
10 Ocwen; correct?

11 A. Yes.

12 Q. So you were denied loans before the tax liens?

13 A. Yes.

14 Q. So the tax liens weren't the problem?

15 A. No.

16 Q. Now, you mentioned earlier you applied for credit at
17 the One Community Federal Credit Union; correct?

18 A. Yes, I did.

19 Q. Do you recall when you did that?

20 A. I'm wanting to say around May.

21 Q. So May of 2014?

22 A. Yes.

23 Q. And remind us again, when was the balloon due?

24 A. July 26th of 2014.

25 Q. Now, what made you go to the One Community Federal

1 Credit Union?

2 A. I had actually -- I had always banked there. They have
3 certain -- I met their standards of what they needed for me
4 to be approved.

5 Q. How long did you bank there?

6 A. Probably 20 -- I think I became a member when I entered
7 the fire department, probably 28 years.

8 Q. And had you always had success with your loans there?

9 A. I had different cars that I bought multiple times. I
10 don't think I ever recall being late on any of my accounts,
11 or I never had any kind of problems with any of my accounts
12 there.

13 Q. And, so, why in May did you choose to go there?

14 A. Well, I, I actually met what was required to get
15 approved there.

16 Q. And you felt comfortable with your credit union?

17 A. Yes.

18 Q. And what happened in that application?

19 A. I jumped all -- made it through all the hurdles even
20 with the, you know, explaining what was going on with this.

21 Q. Explain what was going on with what?

22 A. With the lawsuits, the lawsuit over this. They knew
23 about the liability with the income tax. And it was
24 understood that at the closing that the income tax
25 liabilities would be paid off. The liens would be paid off

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1 during the closings.

2 Q. So it was your understanding the taxes weren't a
3 problem at that point?

4 A. No, the taxes weren't a problem.

5 Q. What was the problem at that point?

6 A. The foreclosure that was listed on -- was the thing
7 that stopped the loan from going through.

8 Q. Now, we're going to hear from Steve Napier through his
9 deposition in a little bit. But what did Mr. Napier tell
10 you?

11 A. He told me I would have been approved.

12 MR. MANNING: Objection to hearsay, Your Honor.

13 MR. NOLAN: Your Honor, my response is he has
14 personal knowledge of the statement that was made and it's
15 not being offered for the truth of the matter again. Again,
16 it is being offered to show the effects on Mr. Daugherty
17 when he heard this and how it relates to his damages and the
18 struggles he encountered at this point moving forward. He
19 has personal knowledge of the statement that was made and
20 it's not being offered for the truth, but --

21 THE COURT: I'm sorry. Go ahead.

22 MR. NOLAN: It's being offered to show the effect
23 on Mr. Daugherty and his plight at this point moving forward
24 in his loan application process.

25 THE COURT: Well, it cannot be offered for the

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1 truth of the statement if it is being offered to show the
2 impact.

3 However, Mr. Manning, on the plaintiff it could very
4 well be admissible. Do you have other grounds that you want
5 to state?

6 MR. MANNING: No, Judge. My objection, as others,
7 is to limit the admissibility so that it's not for the truth
8 of the matter.

9 THE COURT: All right. That objection is
10 sustained. I'm going to allow him to testify to the
11 response for the limited purpose that you have stated here,
12 Mr. Nolan. It will not be considered by the jury for the
13 truth of the statement.

14 MR. MANNING: Thank you, Judge.

15 BY MR. NOLAN:

16 Q. What did Mr. Napier tell you?

17 A. He told me if it wasn't for the foreclosure on the
18 credit report, I would be approved for that loan.

19 Q. And how did that make you feel?

20 A. Well, I felt, I felt horrible that this is still
21 holding me up. At the same time, I was glad that, you know,
22 that he was still kind of siding with me on this. But it
23 was kind of like the last ditch effort to try to get this
24 loan to go through.

25 Q. Now, why did you call it the last ditch effort?

1 A. Well, this loan was going to mature in two months,
2 three months. So, I mean, where was, where was I going to
3 go after this to try to get this settled because I had
4 already spent 15 months with all the paperwork and all the
5 calls and letters and even going through the federal agency
6 to try to get them to fix this on my credit report.

7 Q. And even your local credit union couldn't help you?

8 A. No.

9 Q. And where do you go from there?

10 A. Well, from there I had to get a law firm to step in and
11 try to get this corrected.

12 Q. You had to file a federal lawsuit at that point?

13 A. Yes, I did.

14 Q. Do you know when Ocwen quit reporting on your credit?
15 Let me rephrase that. When did the Ocwen tradeline fall off
16 of your credit report?

17 A. I believe it was around August of 2014.

18 Q. After --

19 A. Well after the lawsuit had been filed.

20 Q. Now, did you -- what did you do after the lawsuit had
21 been filed? Did you continue to try to refinance your loan?

22 A. Yes. I went ahead -- after they removed this, I went
23 ahead with Equifax. Ocwen had actually told me that once
24 this is all overwith to come back and they would probably go
25 ahead and give me the loan.

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1 Q. Who told you that?

2 A. Ocwen -- or One Community.

3 Q. Not Ocwen?

4 A. Not Ocwen. One Community had told me that I'd still --
5 once this was overwith, they'd probably go ahead and grant
6 the loan.

7 I went ahead -- just to try to get my house off the
8 table because I'm still worried about losing my house, I
9 went ahead and applied with Quicken Loans once again after I
10 talked to them on the phone. And they seemed to think that
11 they could try to swing it through and get the loan
12 approved. And --

13 Q. Well, Mr. Daugherty, can you look at the document on
14 the screen?

15 A. Yes.

16 Q. Can you identify this for us?

17 A. Yes. This is where I was -- it says, "Congratulations.
18 You've been conditionally approved for an FHA 15-year fixed
19 loan."

20 Q. What's the date on this letter?

21 A. February 21st, 2015.

22 Q. Seven months after the lawsuit was filed?

23 A. Yes.

24 Q. And six months after the Ocwen foreclosure tradeline
25 fell off your credit?

David Daugherty - Direct (Nolan)

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1 A. Yes.

2 Q. Now, at this point -- did you receive this letter in
3 the mail?

4 A. Yes, I did.

5 Q. At this point in February of 2015, did you still have
6 your state tax liens?

7 A. Yes.

8 Q. Did you still have other payment collection accounts on
9 your credit report?

10 MR. MANNING: Objection, leading.

11 BY MR. NOLAN:

12 Q. Was there anything else on your --

13 THE COURT: Just a second. There's an objection
14 to the question being leading. He has asked whether he
15 still had the tax liens. And then he asked the similar
16 second question.

17 Even though it calls for a "yes" or "no" answer, Mr.
18 Manning, I overrule it because I don't think it suggests the
19 answer. He is free to answer either way.

20 MR. MANNING: Okay. I understand, Judge.

21 THE COURT: For that reason, I overrule the
22 objection. Go ahead, please.

23 BY MR. NOLAN:

24 Q. Were the other paid collection accounts still on your
25 credit report at that time?

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1 A. They were paid. They were still on there, but they
2 were paid.

3 Q. But yet you were conditionally approved at this point?

4 A. Yes.

5 MR. NOLAN: Your Honor, I'd move for the admission
6 of Plaintiff's Exhibit Number 9.

7 THE COURT: Any objection, Mr. Manning?

8 MR. MANNING: Yes, Judge, to the purpose. It may
9 not be offered for the truth of the matter asserted. For
10 the third-party document, there's no one here to talk about
11 what, who wrote it, what it means and how it should be
12 interpreted. But I understand Your Honor's rulings on the
13 prior documents.

14 THE COURT: Anything further?

15 MR. NOLAN: Your Honor, it's just limited to the
16 effect on Mr. Daugherty and his state of mind moving forward
17 at this point.

18 THE COURT: All right. I will admit the document
19 for the purpose that's been outlined here by you, Mr. Nolan.

20 It will not be admitted for the truth of what's
21 contained in the document, ladies and gentlemen.

22 Why don't you all stand and stretch there in the box
23 for a moment. It might help you.

24 (Pause)

25 THE COURT: I apologize for the interruption,

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1 Mr. Nolan.

2 All right. Thank you all.

3 Mr. Nolan.

4 MR. NOLAN: May we publish this exhibit to the
5 jury, Your Honor?

6 THE COURT: Yes, sir, you can publish it at your
7 discretion. And that is Number 9; is that correct?

8 MR. NOLAN: Correct, Judge.

9 THE COURT: All right.

10 BY MR. NOLAN:

11 Q. Mr. Daugherty, can you read the first sentence for us,
12 please?

13 A. It says, "Congratulations. You have been conditionally
14 approved for an FHA 15-year fixed loan in the amount of
15 \$101,750 for the refinance of your primary residence at 35
16 Valley View Drive, Vienna, West Virginia, 26105."

17 Q. And the rest of this document tells you what's still
18 needed to complete the application. Okay. So at this
19 point, how do you feel when you get a letter like this?

20 A. I was feeling pretty good. They had also I believe
21 talked to me on the phone. There was some more paperwork
22 that came that it was going to be a three and a half percent
23 loan on top of it.

24 Q. Now, Mr. Daugherty, I want to go back. Your balloon
25 matured July 26th, 2014; correct?

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1 A. Yes.

2 Q. How do you typically make your payments?

3 A. I usually made them over the phone.

4 Q. You'd call up Ocwen?

5 A. Yes. It would be automatically, to their automatic
6 system I'd pay it.

7 Q. And after July 26th, did you call up Ocwen any other
8 time to make a payment?

9 A. Well, I went head and I made the August payment.

10 Q. You made a payment in August?

11 A. Yes.

12 Q. Even though --

13 A. Even though it was closed and --

14 Q. Did you try to make payments after that time?

15 A. Yes. They wouldn't take payments after that.

16 Q. They wouldn't take your payments?

17 A. No. If you went on the website, it looked like my --
18 where I always looked at my account, everything was just
19 like I didn't have an account there.

20 Q. So where were you supposed to send your money?

21 A. When I saw that I was off-line and everything, I
22 believe that's when I called.

23 Q. Mr. Daugherty, what has this experience been like for
24 you from March, 2013? I just want you to summarize for us.
25 Take us through what your experience has been like.

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1 A. To, to go through this, it's pretty frustrating to work
2 on something that -- and I wasn't worried too much about it
3 at the beginning. I just thought another paper glitch and,
4 you know, I'd be able to get it fixed, no problem, move on
5 and continue. You know, I had bigger issues with my health
6 at the time to me.

7 But this has been probably one of the most frustrating
8 things I've ever dealt with ever to go on this long and try
9 to explain to someone that you've got a problem and you're
10 just basically being ignored. They never did respond in a
11 way that looked like they would ever fix it.

12 And it's gone on and on and on clear up to the point
13 where, you know, whether you're going to own a house or
14 where you're going to be.

15 Q. About that, what would you have done if you lost your
16 home?

17 A. Well, basically, you'd have to start all over. We
18 would have had to move elsewhere. We would have had to find
19 another house and we would have had to start completely
20 over.

21 Q. And remind us again, what were the specific aspects of
22 this house?

23 A. This is where I wanted to be my final house.

24 Q. And you've had significant health problems you
25 testified to; correct?

David Daugherty - Cross (Manning)

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1 A. My health was in really poor shape at one point.

2 Q. Which is why that was a crucial factor in your home?

3 A. Yes.

4 Q. Thank you, Mr. Daugherty. Mr. Manning might have some
5 questions for you.

6 THE COURT: Cross-examination, Mr. Manning?

7 MR. MANNING: Thank you, Judge. May we take a
8 five-minute recess, Judge?

9 THE COURT: Yes, sir.

10 Ladies and gentlemen, I'll give you a recess. Let's
11 just take our afternoon recess. While you're out, do not
12 discuss this case among yourselves or permit anyone to
13 discuss it with you or in your presence. And please be in
14 your jury lounge at 25 minutes till the hour. We'll stand
15 in recess.

16 (Recess taken from 3:19 p.m. until 3:38 p.m.)

17 THE COURT: You all be seated, please.

18 Mr. Manning.

19 CROSS EXAMINATION

20 BY MR. MANNING:

21 Q. Mr. Daugherty, are you ready to answer some questions?

22 A. Yes, I am.

23 Q. Okay, great. Let me start by asking you whether you
24 know the difference -- you're aware there's a difference
25 between reporting credit and furnishing data to a credit

1 reporting company; right?

2 A. A little bit.

3 Q. Okay. You understand that Ocwen doesn't report
4 anything about your credit; right?

5 A. No. I understood they do send information to the
6 credit reporting agencies.

7 Q. Okay. And when I use the word "furnishing" are you
8 aware that's what I'm referring to, like a mailman providing
9 the data to the credit bureau, that that's what Ocwen's role
10 is?

11 A. Yes.

12 Q. Okay. And then the credit bureaus are the ones who
13 actually do the reporting about your credit; right?

14 A. I understand they're reporting what they're being
15 shown.

16 Q. So you know there's a difference in the roles between
17 those two companies; right?

18 A. Yes.

19 Q. Okay. And I want to make sure we're clear on the front
20 end of that because a number of times you used the word
21 "reporting" as opposed to "furnishing" and I just want to
22 make sure that we get that straight as we go forward. Okay?

23 A. Okay.

24 Q. If at any time what I'm asking you is confusing, just
25 let me know and I'll re-ask it.

1 A. Okay.

2 Q. So let's next go to -- you talked a little bit about
3 the denials of these five different credit applications;
4 right?

5 A. Yes.

6 Q. Do you recall that?

7 A. Yes.

8 Q. Now, there were a couple of those that you didn't apply
9 for yourself; right?

10 A. That's correct, the one.

11 Q. Was that the Disney card?

12 A. Yes.

13 Q. And that was something your wife had done using your
14 name?

15 A. Yes.

16 Q. And you were fine with that because she's your wife?

17 A. Yes.

18 Q. Okay.

19 A. Actually, I wasn't but there was nothing I could do
20 about it.

21 Q. Okay, fair enough.

22 A. I hate Disney.

23 Q. You yourself --

24 THE COURT: That's more than you wanted, Mr.
25 Manning.

1 BY MR. MANNING:

2 Q. You yourself don't have any experience or knowledge or
3 expertise about why you were being denied credit; right?

4 A. Not expertise, no, but I was getting to where I thought
5 I was getting to understand it a lot more.

6 Q. And you don't, you don't know why those companies
7 denied for any particular reason, whether it was these 11
8 other collection accounts or the tax liens; right?

9 A. Well, first off, the other collection accounts were
10 paid off, but they were still going to stay on my report.
11 And then the ones like Disney was saying due to the
12 foreclosure.

13 Q. So let's take it step by step.

14 A. Okay.

15 Q. So you'd agree that your personal credit, you had --
16 other than the one mortgage with Ocwen, you had 11 other
17 accounts in collection; right?

18 A. No. At one --

19 Q. At no point that's never been true?

20 A. At one time, yes.

21 Q. Okay.

22 A. I, I had a credit history where I had problems, yes, at
23 one time.

24 Q. Okay. And as time passed, you were able to correct
25 some of that; right?

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1 A. Most all of it.

2 Q. Okay. And it's also true that you had two tax liens
3 because you hadn't paid your state or federal taxes; right?

4 A. Yes. But if I had to refinance it, I wouldn't have had
5 tax liens. That came afterwards.

6 Q. Okay. So I'm going to take you through a couple of the
7 documents. I figure we'll start right where these exhibits
8 came in. If we could look at Exhibit 2, Plaintiff's Exhibit
9 2 again.

10 MR. MANNING: Is it okay if I just connect the
11 computer up here?

12 THE CLERK: I can give you the hard copy if you
13 want to do it on the ELMO.

14 MR. MANNING: I don't think the ELMO appears very
15 well. I'm sorry. We'll attach this up here if that's okay.

16 BY MR. MANNING:

17 Q. How about now? Is that better? We have it hooked up
18 here.

19 So, Mr. Daugherty, just to reorient you, you recall
20 being asked about this document; right?

21 A. Yes.

22 Q. Okay. So this has already been identified as
23 Plaintiff's Exhibit 2. And in this letter you again specify
24 that your problem is with an Equifax credit report; right?

25 A. Yes.

1 Q. You didn't have any problem with TransUnion or
2 Experian?

3 A. That's correct.

4 Q. To the extent all these other collection accounts and
5 tax liens are appearing on TransUnion and Experian, you
6 don't dispute those; right?

7 A. The tax lien was not on this at this time.

8 Q. Okay. So let's just --

9 A. So the other accounts were paid off on that.

10 Q. Okay. So you don't dispute that Experian and
11 TransUnion showing that you had 11 other collection accounts
12 would have been accurate?

13 A. No. They weren't the issue.

14 Q. Okay. This dispute that you're here about today is
15 just about Equifax; right?

16 A. Yes.

17 Q. And you're not aware of TransUnion or Experian
18 reporting this one Ocwen account twice at any point; right?

19 A. Could you repeat that, please?

20 Q. Sure. You're not aware of these two other credit
21 bureaus, TransUnion and Experian, that you were also
22 receiving credit information from ever reporting the one
23 Ocwen account twice?

24 A. No.

25 Q. You don't have any dispute with them doing that wrong?

1 A. No.

2 Q. Okay. It's solely because Equifax was reporting the
3 same account twice; right?

4 A. It was because it was on that report, yes.

5 Q. And you agree that there's just one Ocwen account;
6 right?

7 A. Yes.

8 Q. And that Ocwen account you identify in this letter, if
9 we could scroll down just a little bit, by a loan number.
10 And that loan number is 7092244573. That is your loan with
11 Ocwen?

12 A. That's correct.

13 Q. And to the extent Equifax is reporting that loan twice,
14 that's a mistake; right?

15 A. At that point, I wasn't even aware that it was on there
16 twice.

17 Q. Okay. So at this point, March, 2014, this is four
18 months before your full loan payment became due; right?

19 MR. NOLAN: Sorry, Your Honor, to interject. I
20 think this is March, 2013, just to clarify.

21 BY MR. MANNING:

22 Q. March 14th, 2013. As of the date of this letter, you
23 weren't aware that Equifax was reporting two accounts?

24 A. That's correct.

25 Q. Okay. And in this account you're taking issue with the

1 fact that Equifax is saying that your Ocwen account is past
2 due, but it wasn't; right?

3 A. I believe I was late that month, but it was the
4 thirty-day mark that I admitted to.

5 Q. Okay. On the second page of this document you have an
6 excerpt from -- well, let me ask you. Do you know where you
7 obtained this excerpt from?

8 A. I believe this came from the consumer financial, or
9 not -- creditscore.com I believe.

10 Q. Okay. So you had a complete creditscore.com credit
11 report --

12 A. Yes.

13 Q. -- which would have combined TransUnion, Experian, and
14 Equifax credit reporting information about you?

15 A. Yes.

16 Q. But you didn't provide that with this letter?

17 A. I didn't need to. I was being told that the loan
18 wouldn't go through because this was showing a foreclosure.

19 Q. Okay. And just focus on my question if you could. You
20 didn't give the complete creditscore.com report to Ocwen
21 with this letter?

22 A. No. I just showed them what was wrong with the report.

23 Q. Okay. And you didn't tell Ocwen that Equifax was
24 reporting the one account two times?

25 A. At that point, no.

1 Q. Okay. You have hand-written on here "Equifax." That's
2 your handwriting?

3 A. Yes.

4 Q. And you're identifying that Equifax is reporting you as
5 past due and the actual foreclosure process had been
6 started; right?

7 A. Yes.

8 Q. But you don't know why they were doing that. You just
9 know Equifax was doing it?

10 A. That's correct. But at the same time, you know, we had
11 had that previous conversation on the phone where I
12 explained that this was on there with the Ocwen rep before
13 this letter came out.

14 Q. And at no point during your testimony with your
15 attorneys here today did you ever say that you ever told
16 Equifax or Ocwen that they were reporting the same account
17 twice?

18 A. I did later on.

19 Q. Okay. But my question again, sir, during your
20 testimony today, you never said that; right?

21 A. That's correct.

22 Q. Okay.

23 A. That's the first time it's been asked like that, but
24 later on, yes, I did.

25 Q. And you'd agree it's not in this letter?

1 A. It's not in that letter.

2 Q. And there's not a full credit report?

3 A. That's correct.

4 Q. And you didn't provide any letter today that shows a
5 complete credit report as having been provided to my client,
6 Ocwen; correct?

7 A. Repeat that, please.

8 Q. Yes. We looked at a number of documents with your
9 testimony with your counsel.

10 A. Yes.

11 Q. None of the letters and none of those documents show
12 that at any point you provided Ocwen a complete credit
13 report; correct?

14 A. That's correct.

15 Q. Okay. Similarly, you talked about this Aggressive
16 Credit Repair company with Lorin Hanks; right?

17 A. Yes.

18 Q. You haven't provided any documents to show that
19 Aggressive Credit Repair provided a complete credit report
20 from Equifax to Ocwen; right?

21 A. That's correct.

22 Q. You're not aware of any documents by Equifax,
23 Aggressive Credit Repair, or you that ever told Ocwen that
24 there was two accounts being reported for your one mortgage
25 loan; right?

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1 A. Not documents. I explained it, but not documents.

2 Q. Okay. Let's go to Exhibit 4, please.

3 MR. MANNING: This is Plaintiff's Exhibit 4, Your
4 Honor.

5 THE COURT: All right.

6 BY MR. MANNING:

7 Q. Do you recall being asked about this document,
8 Mr. Daugherty?

9 A. Yes.

10 Q. Okay. Let's see if we can make it a little bit bigger.
11 I'm having trouble reading it. Let's just focus on the text
12 of the first paragraph.

13 Okay. So in this letter -- and this is why I was
14 asking you about the difference between furnishing and
15 reporting. About four or five lines down you'll see,
16 "Equifax has placed information on my credit report stating
17 my account with Ocwen was 120 days late in the month of
18 March, 2013." Do you see that?

19 A. Yes.

20 Q. So Equifax is the one who's reporting it that way, not
21 Ocwen; correct?

22 A. That's what Ocwen was telling me when, the times I had
23 conversations that actually I was believing it was Equifax.

24 Q. Okay. And Equifax was the one who reports because we
25 know Ocwen is a furnisher and they don't do any reporting;

1 right?

2 A. Yes.

3 Q. Okay. So next you go on to say more of what Equifax is
4 showing, that they're showing you 120 days late and they --
5 you identify a couple months in particular, October, 2013,
6 and December, 2013. Do you see that?

7 A. Yes.

8 Q. Are you aware that Ocwen, when it furnishes the data,
9 when it conveys every month the data about your account to
10 Equifax, that that information was never wrong? Are you
11 aware of that?

12 A. No, I'm not aware of that.

13 Q. Are you aware that in the monthly data that Ocwen
14 provided about your account to Equifax, in those particular
15 months, October and December, 2013, that there was actually
16 a code put on the account as you having disputed it? Are
17 you aware of that?

18 A. Well, I believe you, yes.

19 Q. So do you know the effect of whether Ocwen was
20 reporting that account as disputed when it -- when Equifax
21 computes your score? Do you know what effect that would
22 have?

23 A. Well, it didn't appear to have any effect.

24 Q. You don't know?

25 A. I don't know.

1 Q. Okay. Next it says that the statements that Equifax
2 was making were false; right?

3 A. Yes.

4 Q. Again, the focus here is statements Equifax was making;
5 right?

6 A. Yes.

7 Q. Okay. The next sentence says, "Equifax also shows that
8 I have a past due balance right now of \$6,128."

9 You're not aware of any of that monthly data that Ocwen
10 was furnishing to Equifax that ever showed you were that
11 amount late when you weren't, are you?

12 A. I never seen anything like that, no.

13 Q. And when you talked to Ocwen they said, "No, we're
14 showing that you're current;" right?

15 A. Yes.

16 Q. If you go down two more sentences, I believe you
17 already talked about this so I won't belabor it. You were
18 late in March, 2013. And I think there was some snafu
19 with -- was it on-line billing?

20 A. It was just automated billing, automatic payroll going
21 in a couple days late.

22 Q. Gotcha. The next line talks about, "We have disputed
23 these reporting inaccuracies with Equifax several times and
24 that -- claim they are correct." I take it by that you mean
25 Equifax is claiming they're reporting it right?

1 A. My knowledge was that the information come back from
2 Ocwen to Equifax that it was right.

3 Q. And when you complained to Equifax, Equifax is telling
4 you, "No, we're doing it right."

5 A. Yes, they would come back and say that.

6 Q. And that's what you were reflecting in this letter?

7 A. Yes.

8 Q. Now, if you look at the second page of this letter, the
9 next one, we'll again see here that there's a partial
10 excerpt. Maybe we can zoom out a little bit.

11 So you'd agree that what's being shown on this screen
12 here, Mr. Daugherty, this is not your complete credit
13 report; right?

14 A. That's correct.

15 Q. This is -- I believe your testimony on your direct
16 examination was a portion of a document that you received
17 from creditscore.com. Is that right?

18 A. Yes.

19 Q. All right. Now, is this your handwriting on here?

20 A. Yes, it is.

21 Q. Okay. So you referenced the report date and pulled
22 this specific tradeline -- maybe I shouldn't use that word.
23 Are you familiar with the word "tradeline" where it's just a
24 summary of that account?

25 A. Yes, yes.

1 Q. Okay. So this tradeline is the only one that you
2 pulled out of that report and provided to Ocwen?

3 A. It's the only one I have a problem with.

4 Q. And you didn't explain to Ocwen at least as of March,
5 2014 -- you see the date on this; right?

6 A. Yes.

7 Q. -- that there were two accounts for Equifax for your
8 one mortgage loan; right?

9 A. I believe my conversation before this letter we went
10 over it briefly.

11 Q. Okay.

12 A. We had a pretty good discussion on that original phone
13 conversation.

14 Q. You'd agree it's not in this letter?

15 A. It's not in that, no.

16 Q. And you never in any of these letters say duplicative
17 tradelines?

18 A. No.

19 Q. And you're saying the problem that you had was you took
20 an excerpt and gave them this, but you didn't give them
21 everything; right?

22 A. That's correct. I would have thought they could have
23 looked it up themselves when they were doing their
24 investigation.

25 Q. Well, maybe I should ask you this. Do you know whether

1 Ocwen has access to Equifax's system?

2 A. Not personally, no.

3 Q. Okay. You were assuming that they must have?

4 A. Well, I would assume that if I'm showing that there's a
5 problem coming across this when I'm current on my mortgage
6 for those particular months, they would actually follow up
7 and correct it --

8 Q. Okay.

9 A. -- whether, no matter what agency I went through.

10 Q. Are you aware that Ocwen repeatedly was following up
11 with Equifax to say you're current?

12 A. That's what I understood.

13 Q. Okay. Now, if you look at your handwriting here,
14 you've identified what you believe to be inaccurate, which I
15 take it is the past due amount, both the total of the 6,000
16 and change plus the number of months past due; right?

17 A. Yes.

18 Q. Okay. But there was another tradeline on there for the
19 same account that Equifax was reporting that was correct;
20 right?

21 A. Yes.

22 Q. And you've already said today that you had no problem
23 with that because the data Ocwen was furnishing for that
24 tradeline was right; correct?

25 A. That's correct.

1 Q. And you have no evidence that Ocwen was furnishing this
2 data because the other account was perfectly correct; right?

3 A. No, I, I wasn't aware that -- go ahead and repeat that
4 one more time for me, please.

5 Q. Sure. So I'll break it down. There are two
6 tradelines --

7 A. Yes.

8 Q. -- on your credit report for your one account, but
9 that's only on the Equifax credit report.

10 A. Yes.

11 Q. One of those tradelines is perfectly accurate because
12 that's the data Ocwen --

13 A. That's correct.

14 Q. -- was provided.

15 A. That's correct.

16 Q. The second one which is duplicative that you never told
17 Ocwen about in any of these letters was wrong and Ocwen
18 didn't know about it; right?

19 A. They knew about it because I sent them a letter showing
20 this.

21 Q. Okay. But they didn't know there were two; right?

22 A. That's correct. They may not have known there was two.

23 Q. And, so, when they received this, they told you, "No,
24 we're not reporting you as late for the months that you've
25 circled and drawn arrows to." Right?

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1 A. That -- they told me I was current, yes. All the way
2 through they kept telling me I was current until I got the
3 report in front of me saying I'm not.

4 Q. And you don't have any knowledge of any evidence that
5 Ocwen ever reported you as late for the months of June,
6 July, October, or December that you've identified here;
7 right?

8 A. Well, I, I was told after this up closer date to my
9 deposition that it all generated from Ocwen is what I was
10 told, not from this right here but, no. Up to this point, I
11 thought it was Equifax.

12 Q. Okay. As you sit here today, Mr. Daugherty, you're not
13 aware of any evidence that Ocwen ever itself furnished any
14 data to Equifax that you were late for the months of June,
15 July, October, or December; correct?

16 A. That's correct.

17 Q. Okay. Thank you. The one exception to this letter
18 that I think you've now clarified is you said -- here you've
19 drawn an arrow to March, 2013, as being inaccurately
20 reporting you as late. But you were late. You just weren't
21 120 days late?

22 A. That's correct.

23 Q. Okay. So I want to ask a specific question on that.
24 You're also not aware of any evidence that Ocwen ever
25 reported you -- ever furnished data to Equifax that you were

1 120 days late in March, 2013; right?

2 A. That's correct.

3 Q. Thank you. Now, I'd like to go to Exhibit 5. You'll
4 recall, Mr. Daugherty, that this is the letter -- it's on
5 CFPB letterhead, which stands for Consumer Financial
6 Protection Bureau. And during your direct you went through
7 and talked about -- this is actually a compilation of a
8 couple of different sets of correspondence; right?

9 A. Yes.

10 Q. So let's go to the earliest one in this chain, if we
11 could go all the way to the bottom. It looks like the
12 earliest message here is from March 26th, 2014. And this
13 is -- it really is very similar to the letter we just read;
14 right?

15 A. Yes, it is.

16 Q. You're, you're identifying that Equifax is -- if you go
17 about halfway down, "Equifax shows on my credit report --"
18 if you can blow up just that section. This is hard to read.
19 We'll do the best we can. Hopefully we can all see it.

20 About halfway down there's a sentence that begins,
21 "Equifax shows on my credit report that I was late on my
22 mortgage payment by 120 days in March, June, July, October,
23 and December, 2014. They also show that I am currently past
24 due by \$6,178."

25 Do you see that?

1 A. Yes, I do.

2 Q. Okay. And, so, that's the same issue that you're
3 identifying in the other one?

4 A. Yes.

5 Q. And that prior letter you attached an extra credit
6 report, but you don't recall attaching anything to this
7 letter; right?

8 A. That I sent in to the consumer protection?

9 Q. Right.

10 A. I, I did send that in.

11 Q. The same excerpt?

12 A. I believe so.

13 Q. Okay. But you'd agree it's not on this document?

14 A. Yeah, it's not on that document, but I did send that in
15 I do believe.

16 Q. Okay. Then if you go to the next entry, it looks like
17 it's two pages up. It has a date -- let's look at
18 April 17th, 2014.

19 Mr. Daugherty, if you look at the entry there, it says,
20 "Customer David Daugherty via web." And it's dated
21 April 17th, 2014; right?

22 A. Yes.

23 Q. Okay. So this is something that you wrote?

24 A. Yes.

25 Q. And it says, "I sent Ocwen a copy of my Equifax

1 report." Right?

2 A. That's correct.

3 Q. But you don't mean the whole report because you've
4 already said what you sent was an excerpt?

5 A. It should have been sent what I had -- the problem I
6 had with my report I sent, yeah.

7 Q. Okay. This statement here is clear that it shouldn't
8 be interpreted as you sent the whole credit report because
9 you did not do that; right?

10 A. That's correct.

11 Q. So then it goes on to identify the same issue, the
12 second sentence. "I understand Equifax is now showing that
13 my loan is current but they still show me being 120 days
14 late" -- I'm sorry -- "120 days all of those months. There
15 is no way I can be satisfied with this as my loan will
16 mature in July with Ocwen." Right?

17 A. That's correct.

18 Q. Okay. So you sent this and the same issue. Equifax is
19 still reporting you as late; right?

20 A. Yes.

21 Q. And your testimony during your direct examination was
22 Equifax didn't correct that until after you filed the
23 lawsuit; right?

24 A. That's correct. The report on that particular report
25 was not correct until after the lawsuit was filed.

1 Q. And, actually, it wasn't until a couple months after
2 the lawsuit?

3 A. Several months.

4 Q. Does the, does the date, September 23rd, --

5 A. That sounds --

6 Q. -- 2014 sound right?

7 A. That sounds about right.

8 Q. Okay. And we'll see other evidence in the trial about
9 that. But I just wanted to see if you knew the approximate
10 date.

11 Now, if you go to the first page, I want to start at
12 the -- we can start right at the top just to orient you.
13 Let's see if we can make that a little bigger. Okay.

14 So the response from Ocwen at the top, "The Office of
15 the Consumer Ombudsman for Ocwen Loan Servicing would like
16 to take this opportunity to respond to your recent concern
17 regarding the referenced loan. The Consumer Ombudsman was
18 created to provide Ocwen's customers with a resource to
19 assist with unresolved concerns and issues."

20 Do you see that?

21 A. Yes.

22 Q. So that's like a salutation. Now we're going to get
23 into the substance. Right?

24 So the substance begins, "Ocwen is obligated to report
25 the loan accurately to the credit bureaus." That's the

1 furnishing process; right? We have to give the correct data
2 to them; right?

3 A. I would think.

4 Q. Based on the due date. And, so, what they're referring
5 to as the contractual due date is your note. Remember
6 looking at Exhibit 1, the note?

7 A. Yes.

8 Q. And you agree that the note is money that you borrowed
9 and that you promised to repay; right?

10 A. Yes.

11 Q. And you had to repay it?

12 A. Yes. I have not repaid yet.

13 Q. Then if you go to the next sentence, it says, "Further,
14 if payments are not received within the 30 days of the month
15 then the account will be reported as delinquent."

16 And you understand that just means if you're not paying
17 every month on time, the status of your loan is delinquent?

18 A. That's correct.

19 Q. And you've already testified that you were delinquent a
20 number of months in the past on this account; right?

21 A. Yes.

22 Q. And here specifically Ocwen's addressing March 26th,
23 2013, a payment was -- that payment was received on
24 April 30th. And I want to clarify. That's the payment you
25 were referring to as the on-line payment issue?

1 A. Yes.

2 Q. Okay. So you were delinquent. You agree with that.

3 It's just that it wasn't 120 days late?

4 A. That's correct.

5 Q. Okay. So Ocwen's statement here is accurate; right?

6 A. Yes.

7 Q. Next it says, "A further review indicates that on
8 March 21st, 2014, our office submitted a request to the four
9 major credit reporting agencies, Equifax, TransUnion,
10 Experian, and Innovis to reflect the current balance of the
11 loan in the amount of \$80,499.78." Do you see that?

12 A. Yes, I do.

13 Q. So we've talked about the three major credit bureaus,
14 Equifax, TransUnion, and Experian. They're also referencing
15 a fourth which may be lesser known, Innovis. Is that your
16 understanding?

17 A. Yes.

18 Q. So here Ocwen is telling you, "We sent an update to all
19 four that your balance is \$80,499.78." Right?

20 A. That's correct.

21 Q. And then they give you a confirmation number of how
22 that was submitted so that you would know; right?

23 A. That's correct.

24 Q. It says, "Ocwen reports to Equifax, TransUnion,
25 Experian, and Innovis. These bureaus provide information to

1 the local credit bureaus to update and correct your credit
2 file. Unfortunately, Ocwen is unable to control when the
3 credit reporting agencies will update their records. In the
4 interim, you may use this letter as evidence that the
5 request has been submitted."

6 Do you see that?

7 A. Yes, I do.

8 Q. Okay. So you can agree based on this letter that Ocwen
9 sent an update that they wanted the current balance of the
10 loan to be reflected accurately to all four credit bureaus;
11 right?

12 A. I see that.

13 Q. Right?

14 A. Yes.

15 Q. And then it goes on to state that Ocwen doesn't control
16 what they report; right?

17 A. Yes, I see that.

18 Q. And you understand that that's the way it works; right?

19 A. Yeah, I understand that.

20 Q. Then they go on to tell you, "As of the date of this
21 letter, your loan is due for the April 26th, 2014, payment.
22 If you require further assistance regarding the loan, you
23 may contact Ocwen's Customer Care Center." And they give a
24 number. Right?

25 A. That's correct.

1 Q. Okay. And you'd agree again that at that point in time
2 what was due was the April 26th, 2014, payment?

3 A. Yes.

4 Q. Okay. So you don't have any problem with what's being
5 stated in this letter. It's all true and accurate.

6 A. That part of the letter, yes, I agree.

7 Q. Okay. Let's go to Plaintiff's Exhibit 7 now. This is
8 one of the exhibits that was admitted not for the truth of
9 the matter. So I really wanted to limit my questions again
10 to the purpose of it, which is your understanding and how
11 you made -- how it made you feel. Okay?

12 So let's start with identifying this. This is the
13 Chase, the Disney credit card your wife applied for. And in
14 this account here it says a couple of things about why that
15 credit card was denied. Right?

16 A. Yes.

17 Q. Do you know why you -- why your wife was applying for
18 that credit card?

19 A. As far as I know, anything that has the word "Disney"
20 on it, she likes it.

21 Q. You don't have any, any reason to believe --

22 A. I have no reason why she -- I, I -- personally I think
23 it's just the novelty of having a Disney credit card.

24 Q. Okay. You're not claiming that you were somehow
25 damaged by not receiving a Disney credit card you didn't

1 want; right?

2 A. Well, this goes on my record. So, yes, I am being
3 damaged by this being denied.

4 Q. Okay. Let me, let me clarify then. You're not trying
5 to refinance the house that you're saying was the -- the
6 reason you were applying for credit because the balloon note
7 due in July, 2014; right?

8 A. That's correct.

9 Q. This wasn't going to pay for that?

10 A. No, that wasn't going to pay for that.

11 Q. This was a completely unrelated credit application --

12 A. Absolutely.

13 Q. -- that at the time you knew nothing about?

14 A. That's correct.

15 Q. And then if you go to the second page, at the top --
16 let's see if we can make that a little bit bigger. The
17 print's so small. And then it gives the primary factors
18 that negatively affect your credit score. Do you see that?

19 A. Yes.

20 Q. Okay. It says "delinquency."

21 A. Yes.

22 Q. It says "length of time since last delinquency on all
23 accounts." Right?

24 A. Yes.

25 Q. It says "total available credit on all revolving

1 accounts." Right?

2 A. Yes.

3 Q. "Installment loans not paid as agreed compared to all
4 installment loans." Right?

5 A. Yes.

6 Q. And "number of requests for new credit."

7 A. Yes.

8 Q. None of those identify an Ocwen account; right?

9 A. Some of those do.

10 Q. Okay.

11 A. The installment loans not paid in time, absolutely,
12 right there. The delinquency public record is due to the
13 tax liabilities which wouldn't have been on there.

14 Q. You had -- let me see if I can correct that. You had a
15 number of different accounts, right, --

16 A. Yes.

17 Q. -- on credit?

18 A. Yes.

19 Q. And nowhere on this statement of primary factors that
20 negatively affect your credit score does it say that the
21 reason for that is because you're late on your Ocwen
22 mortgage loan?

23 A. The installment loans.

24 Q. Okay. Maybe, maybe we're quibbling over terminology.
25 It doesn't say the word "Ocwen."

1 A. No, it doesn't say the word "Ocwen." But the only one
2 that I had listed that could possibly have been listed
3 paid -- not paid as agreed would only be Ocwen.

4 Q. But you don't know what Chase was relying on when it
5 denied this because you didn't make this determination to
6 deny your credit application. You didn't even know the
7 credit application was being made. Right?

8 A. Part of that is correct, but that's the only one it
9 could be on the installment loans.

10 Q. Okay. So let's, let's make sure we're clear. This
11 application you didn't know about and you don't know why
12 Chase decided not to give you a Disney credit card; right?

13 A. Well, I can understand why they didn't because this is
14 listed on here.

15 Q. Okay. And that's just your speculation that someone --
16 you've already said you don't know what factors they looked
17 at, what other credit accounts they looked at, or how they
18 calculated your score because that's not what you do; right?

19 A. I mean, I understand what they're listing right here
20 why it wasn't approved, yes.

21 Q. Okay. And you never talked with Chase and they never
22 told you --

23 A. No.

24 Q. -- anything else about why they were denying your
25 Disney credit card?

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1 A. Well, I had no communication with Chase.

2 Q. Thank you. Let's go to Plaintiff's Exhibit 8 now,
3 please. All right. I'm having difficulty.

4 It says, "Dear David Daugherty, this letter is in
5 response to your recent request to open a bill-me-later
6 account."

7 Let me start with that. Do you know what a
8 bill-me-later account is?

9 A. Actually, in hindsight I remember what this one is. I
10 believe this was a PayPal account.

11 Q. Okay. So let's start there. This is not an attempt to
12 refinance your --

13 A. No.

14 Q. -- mortgage?

15 A. It was not.

16 Q. You were not attempting to get a bill-me-later account
17 from Comenity Capital Bank that you would intend to
18 refinance --

19 A. No.

20 Q. -- your Ocwen mortgage that was now becoming due?

21 A. That's correct.

22 Q. It says -- well, let me ask you this. Did your wife
23 apply for this one or did you?

24 A. I believe I did.

25 Q. Okay. Why did you want the PayPal account?

1 A. I do a lot of business on PayPal.

2 Q. Okay. Nothing specific, not related to the home
3 refinance, just unrelated?

4 A. Yes.

5 Q. Okay. So then it goes on in the second paragraph to
6 describe, "Your application was processed by a proprietary
7 scoring system that assigns a numerical value to the various
8 items of information we consider in evaluating an
9 application. These numerical values are based upon the
10 results of analyses of credit histories of large numbers of
11 customers."

12 Did I read that right?

13 A. I believe you did.

14 Q. Okay. So you don't know what the proprietary scoring
15 system is; right?

16 A. That's correct.

17 Q. You don't know all the factors that go into that. You
18 just know that Comenity is telling you they used it, and as
19 a result of their use of it, they denied your application?

20 A. That's correct.

21 Q. So below this they say that they utilized the, the
22 Equifax Credit Information Services credit report with a
23 score of 580. Do you see that?

24 A. That's correct.

25 Q. And on this account it doesn't say anything about an

1 Ocwen mortgage; right?

2 A. Yes, you're correct.

3 Q. And it doesn't say foreclosure; right?

4 A. That's -- it goes back to the delinquencies was the
5 public record.

6 Q. And at one point you had 11 accounts in collection;
7 right?

8 A. Before -- well before this back when I had problems
9 with credit.

10 Q. Okay. And the two tax liens?

11 A. The tax liens came later.

12 Q. Okay. So there's a number of other derogatory credit
13 information that's unrelated to Ocwen?

14 A. The tax liens came later after my credit history was
15 cleaned up.

16 Q. Okay. So let me make sure I'm clear on that. This is
17 a letter as of May, 2014; correct?

18 A. Yes.

19 Q. And are you saying that as of May, 2014, you had no tax
20 liens at any point in the past?

21 A. None that I -- I believe that's correct. I think it
22 was April of 2014 when the tax liens were put on there. I
23 had had some in the past that were paid off.

24 Q. All right. I'm not sure what your answer to my
25 question is. So there were tax liens in the past?

1 A. Yes, but they were paid.

2 Q. Okay. And there were also tax liens that happened
3 later?

4 A. Yes.

5 Q. So you'd agree that there were a number of other
6 negative credit reporting issues unrelated to this Ocwen
7 mortgage account; right?

8 A. Well, the tax liens is what really started the whole
9 thing having a problem with.

10 Q. Okay. Thank you. So, now, are you aware that at this
11 time, the Experian report was actually giving you a higher
12 score than Equifax?

13 A. I wasn't aware of that.

14 Q. Okay. And we'll get into some of your deposition
15 testimony. Do you recall being deposed in this case?

16 A. Yes.

17 Q. Okay. And I'll give you the opportunity to hear some
18 of your testimony.

19 A. If I could, I'd like to -- if I understood right, --
20 disregard that. I'm not sure about that. Go ahead.

21 Q. Well, there's, there's no question pending right now.

22 A. Okay.

23 Q. Is there something you want to correct?

24 A. No.

25 Q. Okay. Let's go to Exhibit 9. This one needs to not be

1 published yet. Thank you. This one hasn't been admitted
2 yet.

3 Mr. Daugherty, do you recall testifying earlier about
4 how when you initially applied for a refinance with Quicken
5 Loans they denied you?

6 A. Yes.

7 Q. Okay. And do you see the letter on the screen? I
8 can't see what your screen shows.

9 A. Yes.

10 Q. Okay, good. So May 2nd, 2014, this is a letter from
11 Quicken Loans and it's addressed to David Daugherty. And it
12 says, "Thank you for giving Quicken Loans the opportunity to
13 help with your home loan. Unfortunately, we are unable to
14 offer you financing at this time." Is this the letter you
15 were referring to --

16 A. Yes.

17 Q. -- when you were denied credit?

18 A. Yes.

19 Q. And it says "credit history," and it gives the reason
20 why they were giving you the denial. It says
21 "current/previous, low payments, judgments, liens, or
22 bankruptcy." Do you see that?

23 A. Yes.

24 Q. And you'd agree that your credit score was affected by
25 all those things; right? Not bankruptcy. You didn't file

1 for bankruptcy; right?

2 A. Yeah, it was affected.

3 Q. Okay. In this letter when you received it -- let me,
4 let me --

5 A. I'm going to revise that last statement. It affected
6 it, but that wasn't the issue with them.

7 Q. Okay.

8 A. It was the, what was listed on the credit line
9 statement, what they told me.

10 Q. So I'd like you to look at the second page now. Do you
11 have that in front you?

12 A. Yes, I do.

13 Q. Okay. Thank you. It says on Page 2 of two in the top
14 right and Quicken Loans was denying you this refinance loan.
15 And in this first paragraph they say, "We obtained your
16 credit score from TransUnion and used it in making our
17 credit decision." Do you see that?

18 A. Yes.

19 Q. It says, "Your credit score is a number that reflects
20 the information in your credit report and can change
21 depending on how the information in your credit report
22 changes."

23 Now, we've already established, I believe, that you had
24 no issue with the TransUnion report; correct?

25 A. That's correct.

1 Q. Okay. So here TransUnion is saying your credit score
2 is 627; right?

3 A. That's correct.

4 Q. That's higher than Experian -- I'm sorry -- than
5 Equifax's score on that last letter we looked at which was
6 580; right?

7 A. According to what your last letter was. I had in my
8 head that the one I saw, I believe Equifax was lower than
9 the other two.

10 Q. Yes. And what I want you to focus here on is
11 TransUnion was denying you credit with a higher credit score
12 and not having any issue with your Ocwen mortgage account;
13 right?

14 A. Yes, but my credit score was higher than that until the
15 two liens got put on there.

16 Q. Okay. And let me make sure we're clear. This is
17 TransUnion. You don't have a problem with what TransUnion
18 is reporting; correct?

19 A. That's correct.

20 Q. And TransUnion is giving you a higher credit score than
21 what Equifax was giving you; right?

22 A. I'm not sure about that.

23 Q. Do you recall seeing the letter that said 580?

24 A. I remember seeing the letter but --

25 Q. That's what I'm asking you about.

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1 A. Okay. I remember seeing that.

2 Q. Okay. And, so, TransUnion is still denying you credit
3 even though there's no issue with the complaint you have
4 here today in this case; right? It had nothing to do with
5 it.

6 A. In this instance, yes.

7 Q. All right. Thank you.

8 MR. MANNING: Your Honor, I would move to admit
9 this as Defendant's 1 not for the truth of the matter
10 asserted but, again, for the limited purposes of showing how
11 he responded and how it made him feel.

12 THE COURT: Any objection, counsel?

13 MR. NOLAN: No, Your Honor.

14 THE COURT: Defendant's Exhibit 1 will be admitted
15 into evidence without objection and can be published.

16 BY MR. MANNING:

17 Q. So let's publish this just so the jury has the benefit
18 of seeing what you've been seeing in front of you,
19 Mr. Daugherty.

20 So, again, this second page -- I want to go back just
21 so the jury has the benefit of seeing this.

22 So at the top you'll see Quicken Loans, May 2nd, 2014.
23 And they're denying you and they give a reason based on
24 current/previous, slow payments, judgments, liens,
25 bankruptcy; right?

1 A. Yes.

2 Q. And then on the second page they go on to provide
3 further detail. They reference specifically in the first
4 line of the first paragraph TransUnion; right?

5 A. That's correct.

6 Q. They relied on TransUnion. You didn't qualify. It has
7 nothing to do with the Ocwen mortgage account; right?

8 A. That particular statement, yes.

9 Q. Okay. It goes on to give a couple of other scores.
10 And, again, there's codes. These credit bureaus, they love
11 codes. But you'll see the codes are defined. Then it says
12 you have serious delinquency and public record or collection
13 filed on your credit report. Right?

14 A. That's correct. But that's back to the liens that
15 wouldn't have been there which dropped my credit score down
16 to the 627.

17 Q. The tax liens?

18 A. Yes.

19 Q. And then it has balances are too high on your bank
20 revolving or all revolving credit history accounts; right?

21 A. Yes.

22 Q. And, so, revolving accounts are credit cards; right?

23 A. Yes.

24 Q. You're carrying high balances on a number of other
25 accounts, again unrelated to Ocwen's mortgage; right?

1 A. Yes, that particular month, yes, on that month's
2 reporting.

3 Q. And then below that, recent legal item or collection
4 item reported. That's another separate reason. Do you know
5 what Quicken Loans was referring to there?

6 A. I'm not sure what that would have been.

7 Q. And, lastly, too many delinquent accounts.

8 A. That would be the liability with the tax liens.

9 Q. You're, you're guessing. You don't know because you
10 didn't actually talk to Quicken Loans and have them tell you
11 the tax liens are the issue?

12 A. Well, personally I do know. That was the only thing I
13 was -- I had all my other things on my credit report paid
14 off.

15 Q. Okay. Quicken Loans in this letter doesn't say tax
16 liens; right?

17 A. No, but they always mention public records.

18 Q. And you didn't talk with them and have them tell you
19 tax liens; right?

20 A. No. That's the only thing it could be.

21 Q. You don't know.

22 A. That's the only thing it could be.

23 Q. Okay. You're saying that based on what your
24 understanding of the letter is without the benefit of
25 actually having heard from Quicken Loans?

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1 A. But that's, that's, that's correct but that's all it
2 can be.

3 Q. Thank you.

4 THE COURT: Sir, I'm sorry. Were you finished
5 with your answer?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Go ahead.

8 MR. MANNING: Thank you, Judge. I didn't mean to
9 interrupt.

10 BY MR. MANNING:

11 Q. You also mentioned One Community Federal Credit Union;
12 right?

13 A. Yes.

14 Q. Okay. And that's the local bank that you've been doing
15 business with?

16 A. Yes.

17 Q. Isn't it true that that bank never actually completed a
18 credit application for you?

19 A. No, I don't think that's true. I completed an
20 application with them with the loan officer.

21 Q. I'm sorry?

22 A. Yes, I completed an application with them.

23 Q. Okay. Have you read the deposition testimony of Steven
24 Napier?

25 A. No, I have not.

1 Q. And we're talking over a little bit. I'm going to do
2 my best not to interrupt you.

3 A. Sure.

4 Q. Just let me finish my question.

5 A. Sure.

6 Q. She's trying to write everything down.

7 A. I'm sorry. I thought you were done.

8 Q. No problem. So are you aware that Mr. Napier testified
9 that he never completed a credit application for you?

10 A. No, I'm not aware of that.

11 Q. Are you aware that he said he stopped the process?

12 A. I was told I was turned down.

13 Q. Okay. There isn't any letter that's been offered to
14 that effect; right?

15 A. That, that's true. I can't recall a letter.

16 Q. And we, we've looked at Comenity, Chase, Quicken Loans.
17 That's three denials; right?

18 A. Yes.

19 Q. And then there's no letter from One Community Federal
20 Credit Union?

21 A. I, I can't recall seeing one. That's probably true.

22 Q. Are you aware of a legal requirement that when you're
23 denied a credit application, they have to give you a written
24 notice that says why?

25 A. Not really until now.

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1 Q. Okay. Are you aware that Mr. Napier testified that the
2 reason you could have been denied had it been completed
3 would have been a number of factors?

4 A. That's not what he told me.

5 MR. NOLAN: Your Honor, I'd object to this line of
6 questioning about what Steve Napier testified to. We're
7 going to hear his deposition testimony and he has -- Mr.
8 Napier's deposition testimony will have the first-hand
9 knowledge that Mr. Manning is seeking at this point.
10 Mr. Daugherty does not have first-hand knowledge of that.

11 THE COURT: Any response?

12 MR. MANNING: I'll move on, Judge.

13 THE COURT: I'm sorry?

14 MR. MANNING: I'll move on.

15 THE COURT: All right. As I understand it, the
16 question is being withdrawn.

17 MR. MANNING: Yes, Judge.

18 THE COURT: All right. Go ahead, please.

19 MR. MANNING: Thank you.

20 BY MR. MANNING:

21 Q. There was also another credit application in Embrace
22 Home Loans?

23 A. Yes.

24 Q. Do you recall receiving a letter from Embrace Home
25 Loans?

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1 A. I recall something of that letter, yes.

2 Q. And there wasn't a letter offered by plaintiffs denying
3 you credit from Embrace Home Loans; right? I can be more
4 specific. We haven't seen it today?

5 A. No.

6 Q. Okay.

7 A. I don't, I don't think. I've seen so many things
8 today.

9 Q. Let me ask it this way. Do you know whether there was
10 a letter from Embrace denying you credit?

11 A. I, I believe there might have been possibly.

12 Q. Are you aware that when Embrace Home Loans denied you a
13 credit application they did not reference your Equifax
14 credit report at all?

15 MR. NOLAN: Your Honor, I would object to this
16 question because we don't have any documents. He's
17 testifying about what a letter may or may not say. I don't
18 see any basis for this line of questioning.

19 THE COURT: I overrule the objection just because
20 he -- the witness has indicated that he may have received
21 such a letter. And if that's the case, I think his
22 knowledge of it, Mr. Nolan, could be tested on cross. So
23 I'm going to allow him to answer if he can. I overrule the
24 objection for that reason.

25 Go ahead, please.

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1 MR. MANNING: Thank you, Judge.

2 BY MR. MANNING:

3 Q. Do you need me to re-ask it?

4 A. Yes, please.

5 Q. Okay. Are you aware that when Embrace Home Loans
6 denied your credit application that they did not reference
7 your Equifax credit report?

8 A. I'm not aware of that.

9 Q. Do you have any knowledge as you sit here today as to
10 why Embrace Home Loans denied your credit application --

11 A. Yes, I do.

12 Q. -- given that you don't recall what the letter says?

13 A. Yes, I do.

14 Q. Okay. Do you have the letter with you?

15 A. No. That's not what I thought you were asking me.

16 Q. Okay.

17 A. You said if I had any knowledge. To my knowledge, I
18 did not do an actual credit -- or an application. It was
19 just all over the phone with them which turned out to be an
20 application.

21 And if it's the one I'm thinking of, I was kind of
22 surprised when I saw the rejection in the mail because we
23 just talked over the phone and the person for Chase I talked
24 to on the phone told me on the phone that I wouldn't be
25 approved with the foreclosure on my credit report because

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1 they pulled it up while I was talking to them on the phone.

2 Q. Okay.

3 A. So, so the whole thing was dropped at that point.

4 MR. MANNING: I'm going to move to strike as
5 nonresponsive.

6 BY MR. MANNING:

7 Q. The question is, Mr. Daugherty, you don't have the
8 letter in front of you to know the reasons that were
9 provided by Embrace for why you were denied credit?

10 A. Not in front of me, no.

11 Q. In your answer -- and the Judge can see this in the
12 transcript -- you referenced Chase.

13 THE COURT: I heard him reference Chase and you
14 didn't give me an opportunity to rule on your objection.
15 You kept talking.

16 MR. MANNING: I'm sorry, Judge.

17 THE COURT: Your objection was that -- or you
18 moved to strike it for being nonresponsive. And his answer
19 was relative to Chase as opposed to Embrace. And, so, for
20 that reason I sustain the objection and I would strike that
21 portion of his answer.

22 Go ahead, please.

23 MR. MANNING: Thank you, Judge. I'm sorry I kept
24 talking.

25 BY MR. MANNING:

1 Q. What I'm trying to get at, Mr. Daugherty, is you don't
2 have the letter and you don't know what the letter stated as
3 to why you were denied credit by Embrace Home Loans?

4 A. I do not have the letter. That's correct.

5 Q. And you -- and if the evidence later in this case shows
6 that Embrace Home Loans didn't even rely on your Equifax
7 credit report, then you'd agree that that has nothing to do
8 with the dispute here today; right?

9 A. I can only tell you what they told me on the phone.

10 Q. I'm asking for the reasons they provided you in the
11 letter. And I take it your answer is --

12 A. I'm, I'm having trouble recalling what the letter says.
13 There's been so many documents.

14 Q. Okay.

15 A. I'd have to see it in front of me before I could say
16 what it said.

17 Q. I also have a lot of documents in front of me. All
18 right. So I mentioned earlier that you had given deposition
19 testimony in this case.

20 A. Yes.

21 Q. Okay. Do you recall during your deposition testifying
22 that the first, the first time you learned you had issues on
23 your credit report that may have prevented you from
24 refinancing wasn't until October of 2013?

25 A. No, I don't remember saying that.

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1 Q. All right. We've got to do a little connection so I
2 can show you the deposition. Okay.

3 So, Mr. Daugherty, I can't see your screen. Do you
4 have --

5 A. It's on there.

6 Q. -- the deposition? So let's just -- for the benefit of
7 the witness, let's just go to the top of the page. I just
8 want to show that this is -- at the first page it says
9 deposition of Mr. Daugherty. Correct?

10 A. Yes.

11 MR. MANNING: And, Judge, I'd like to publish this
12 to the jury because it's -- this is all party statements.
13 It's sworn testimony. I believe that anything in his
14 deposition would be appropriate to show the jury.

15 THE COURT: Well, I'm not -- I won't allow that
16 because the deposition itself is not admissible evidence.
17 It is proper to question him on what you perceive to be
18 inconsistent statements. But, otherwise, that deposition
19 which might also, or that page which might also contain
20 consistent statements is not admissible.

21 So I'll permit you to question him from it, impeach him
22 if that is your intent. But the deposition isn't
23 admissible. And, so, I'm not going to permit you to show it
24 to the jury.

25 MR. MANNING: I understand, Judge. Thank you.

1 BY MR. MANNING:

2 Q. So now let's go to Page 19. And you'll see,
3 Mr. Daugherty, -- I'm not sure how familiar you are with
4 these documents. But each page has a page number and on the
5 left-hand column there's a bunch of numbered lines. And I'm
6 going to ask you to look at Page 19, line 1 where it asks a
7 question, "When did you first determine that your credit
8 report contained information that you wanted to dispute?"

9 And your answer, "I would say it was around October,
10 2013, somewhere in the fall."

11 Do you see that?

12 A. Yes. I was wrong. That statement was wrong.

13 Q. Okay. So this sworn testimony is -- you're now saying
14 is incorrect?

15 A. Yes. I didn't have the dates in front of me at the
16 time on the timeline. Yes, I was wrong with that statement.

17 Q. Okay. You'd agree that during this deposition you were
18 under oath; right?

19 A. Yes.

20 Q. And your testimony now is that that statement is false?

21 A. That's correct. That was -- I was wrong.

22 Q. Okay.

23 A. It wasn't anything that was intentional. I was just
24 incorrect.

25 Q. Thank you. Next, if we move forward from there,

1 regarding your Ocwen account, we've already talked about how
2 Equifax was the only credit bureau that was reporting this
3 disputed issue, the duplicative tradeline; right?

4 A. Yes.

5 Q. And you hired a company called Aggressive Credit Repair
6 to help you dispute the negative reporting information;
7 right?

8 A. I was trying to get him to get the record cleaned off.

9 Q. Aggressive Credit Repair was disputing a number of
10 accounts, not just the Ocwen account; right?

11 A. He was doing other accounts, yes.

12 Q. And there were --

13 A. I'm not -- I didn't know which ones that he was working
14 on. He did -- now, the Ocwen account, when I realized that
15 was specifically, I was trying to get him to work on it.

16 Q. Okay. So you don't know what accounts Aggressive
17 Credit Repair disputed?

18 A. That's correct.

19 Q. You hired a company to dispute your credit and then you
20 just let them --

21 A. I'm going to rephrase that. There were times where we
22 talked and certain accounts that he was trying to fix,
23 trying to get corrected. So there were times I knew what
24 accounts that he was trying to correct, and in most cases
25 that he did get corrected.

1 Q. And that's because you had other negative reporting
2 information on your credit report unrelated to Ocwen?

3 A. That's correct. But it was -- those were -- mostly
4 they were paid and still on there when they should have been
5 taken off. They were already outdated.

6 Q. And you hired a company to take care of that --

7 A. Yes.

8 Q. -- and dispute those debts?

9 A. Yes.

10 Q. Right? And you didn't tell him what to put in the
11 letter.

12 A. No. I had no idea how he did his business as far as
13 getting it --

14 Q. So you, you hired him and you said, "Go do whatever
15 letter needs to be done." Is that fair?

16 A. Yeah. I had no knowledge of how he corrected accounts.
17 He had also told me that accounts I owed on I needed to pay,
18 which I did.

19 Q. Have you ever seen the letters that he sent?

20 A. No.

21 Q. So you're not aware that he was disputing over 10
22 different accounts?

23 A. Early on he might have been.

24 Q. Okay. Are you aware that the dispute that Aggressive
25 Credit Repair was making were all that --

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1 MR. NOLAN: Your Honor, I'd object because
2 Mr. Daugherty has testified he's not aware of what the
3 disputes contained. And Mr. Manning is now testifying for
4 his lack of knowledge.

5 THE COURT: Any response, counsel, based on his
6 earlier answer?

7 MR. MANNING: Yes, Judge. Mr. Daugherty said he
8 did think there were 10 different accounts, at least early
9 on, that were being disputed. So he has knowledge, at least
10 some.

11 THE COURT: Mr. Nolan, I believe that that
12 statement is correct. I'm going to overrule the objection
13 and see where it's going. But do not let this prevent you
14 from interjecting other objections as we go forward.

15 Go ahead, please, Mr. Manning. I want to see where
16 you're going from here.

17 MR. MANNING: And to be honest, Judge, I don't
18 remember what my last question was. Could the court
19 reporter maybe read it back?

20 (The court reporter read back the previous question,
21 after which the following occurred:)

22 BY MR. MANNING:

23 Q. -- were all that the account was not yours and you were
24 never late?

25 A. I wasn't aware of that.

1 Q. Did you have any discussions at any point with Lorin
2 Hanks or anyone from Aggressive Credit Repair as to what to
3 say the dispute was?

4 A. No.

5 Q. So you never told him what the dispute -- you just let
6 him dispute whatever --

7 A. I did --

8 Q. Let me just finish my question.

9 A. I'm sorry.

10 Q. You never told him what the dispute. You just let him
11 dispute whatever accounts were reporting negatively; right?

12 A. No, that's not true, not with the Ocwen account.

13 During my deposition it kept getting pointed out to me that
14 on the report showing April 26th your associate kept
15 pressing the good line item from Ocwen loans. And I kept
16 telling them that it was listed twice. And I told Lorin
17 Hanks the same thing. That -- because Lorin had called me
18 up and told me he got Ocwen to fix that account. And I told
19 Lorin, no, it's on there twice.

20 Q. Okay. You don't know whether Mr. Hanks --

21 A. So I did -- the answer is I did have some knowledge
22 with that particular account because I instructed him there
23 was still a problem with it because it was listed twice.

24 Q. All right. I'd just like you to focus on my question.

25 A. Okay.

1 Q. You don't know what Mr. Hanks wrote on your behalf when
2 it disputed the Ocwen account and other accounts?

3 A. That's correct.

4 Q. You don't know whether he ever said there's a
5 duplicative tradeline being reported; right?

6 A. I don't know first-hand, no.

7 Q. You didn't undertake to even look at the letter to
8 ensure that it said that; correct?

9 A. I never had that opportunity.

10 Q. Okay. Well, he worked for you; right?

11 A. He was in Utah is where he works out of. But, no, he
12 never sent dispute letters on what he actually told them,
13 any of the companies.

14 Q. So all you know is you had conversations with him. You
15 gave him access to your credit report. And then he wrote a
16 whole series of letters, but you never looked at any of
17 them?

18 A. That's correct.

19 Q. And you don't know -- I mean, you're here today to talk
20 about an Ocwen duplicative account and you don't know
21 whether he ever put that in the letter; right?

22 A. That's correct.

23 Q. You have no evidence whatsoever --

24 A. He was told to.

25 Q. You have no evidence whatsoever that he sent a single

1 letter that identified, quote/unquote, duplicative
2 tradelines; right?

3 A. I don't know that first-hand, no, sir.

4 Q. And you have no knowledge that Mr. Hanks even knew that
5 there was a duplicative tradeline being reported; right?

6 A. Not until I told him.

7 Q. And despite your testimony here today that you told him
8 that, you never undertook to ensure that he actually put it
9 in a letter that was being sent to Equifax to dispute it;
10 right?

11 A. Well, I paid him monthly. I trusted that he would do
12 what I told him to do.

13 Q. And, similarly, he never put in a letter to Ocwen the
14 words "duplicative tradeline" or identified duplicative
15 tradeline or gave a credit report; right?

16 A. Not in writing.

17 Q. Okay. You mentioned conversations with Mr. Hanks. He
18 told you that there were multiple problems with your credit
19 report; right?

20 A. Yes.

21 Q. And you didn't know exactly what he was doing to help
22 dispute or correct those problems?

23 A. If you would go back and rephrase your last question to
24 make sure we're on the same page on that if you would,
25 please, that I answered that correctly.

1 Q. Okay.

2 A. When you say multiple problems, what do you mean by
3 multiple problems? Problems that he sees that he can fix?
4 Is that what you're stating?

5 Q. I thought you answered "yes," but if you're not sure,
6 I'll re-ask it.

7 A. I'm saying that there was problems that he saw that he
8 could fix. If you mean it that way, yes.

9 Q. Okay. Let me try it this way to make sure we're on the
10 same page.

11 A. Okay.

12 Q. Were you told by Aggressive Credit Repair, this company
13 that you hired, that there were multiple issues with your
14 credit reports that were negatively impacting your scores?

15 A. Yes.

16 Q. And by "multiple" we mean not just Ocwen. There's
17 other problems with your credit. Right?

18 A. I had medical bills early on, yes.

19 Q. And my next question -- I just want to make sure we're
20 still on the same page -- was you don't know what Aggressive
21 Credit Repair was doing exactly to try to fix that because
22 you never saw any of the letters?

23 A. That's correct.

24 Q. Do you know as you sit here today how often Aggressive
25 Credit Repair was sending out letters?

1 A. It sent so many a month. I don't know -- I assume just
2 once a month is what I assumed. I'm not sure.

3 Q. Okay. So the answer is you don't know?

4 A. I'm not sure. Yes, that's correct. I'd get responses
5 once a month.

6 Q. You talked about how you were asked at your deposition
7 about a letter from Aggressive Credit Repair; right?

8 A. Repeat that, please.

9 Q. Sure. I believe while we were talking here today you
10 said, "I remember being at a deposition and being asked
11 about the letter, or at least a letter that Aggressive
12 Credit Repair sent on my behalf." Do you remember that?

13 A. Which, which letter are you talking about, please?

14 Q. Let me, let me put it up on your screen.

15 A. Sure, sure. I'm a little lost.

16 Q. Okay. So, Mr. Daugherty, on your screen there's a
17 letter that's addressed to Equifax with a number of
18 different accounts. And if you scroll all the way to the
19 bottom you'll see that it's, it has your name and your
20 address, your date of birth, and your Social Security
21 number.

22 A. Yes.

23 Q. Do you see that?

24 A. Yes.

25 Q. Is that correct?

1 A. I see this, yes.

2 Q. Okay. Did you prepare this letter?

3 A. No, I did not.

4 Q. Do you know who prepared it?

5 A. Lorin Hanks as far as I know.

6 Q. Okay. So Lorin Hanks prepared this letter on your
7 behalf. And this is one of the letters that you're
8 referring to in your deposition testimony -- I'm sorry --
9 your testimony here today earlier that he sent on your
10 behalf?

11 A. Yes.

12 Q. All right. So in this letter I count one, two, three,
13 four -- 12 different accounts that Aggressive Credit Repair
14 is disputing on your behalf; is that right?

15 A. Yes.

16 Q. And those are all accounts that were reporting negative
17 information that was affecting your credit score and causing
18 it to be low; right?

19 A. Yes.

20 Q. And --

21 A. That was early on. These were all -- most of those
22 should have been taken off because they were outdated.

23 Q. So you had conversations with Mr. Hanks about this and
24 you at least knew that he was going to be disputing a number
25 of the accounts. You just didn't know which ones or what

1 the letter would say.

2 A. I didn't know which ones were first or that he was
3 going to be disputing. He told me the ones that had
4 balances like the West Asset Management, which was all
5 medical bills and I had quite a few of those. He told me
6 that, you know, that's something you have to pay, which I
7 understood.

8 Q. Okay. And you didn't have any input into the creation
9 of this letter?

10 A. No.

11 Q. So, then, I'm not going to ask you anything else about
12 it. We'll take that one down. Okay.

13 So we talked a little bit during your direct
14 examination with your plaintiff's attorneys about how you
15 had, at least I think you said three conversations with
16 Ocwen.

17 A. Yes.

18 Q. And you were told -- were you told by Ocwen that you
19 were not being furnished data as being late in the months of
20 June, July, October, and December? Do you remember that?

21 A. Repeat the --

22 Q. Yeah. It's a difficult question. I'm sorry. Let me
23 try it again. So let's think back to the, one of the
24 exhibits that we looked at earlier where you had given that
25 excerpt from your credit report with that one Ocwen account.

1 A. Yes.

2 Q. And it had four months that you were disputing.

3 A. Yes.

4 Q. Okay. And those four months were June, July, October,
5 and December of 2013; right?

6 A. Correct.

7 Q. And when you talked with Ocwen, Ocwen on the phone
8 confirmed with you that you were not being reported as late
9 by Ocwen. It wasn't giving that data to anybody. Right?

10 A. They told me that. But at the same time in that
11 conversation is when I told them that it was still being
12 listed. And I believe the conversation we're talking about
13 is like March 17th, 2013. And we, we discussed the problem
14 on the phone with it being listed twice.

15 Q. Okay. And you don't have any record, voice recording,
16 or anything of that conversation?

17 A. No. But how many times do I need to talk to them over
18 the same issues?

19 Q. Well, I think you said you talked to them a total of
20 three times.

21 A. Actually, I believe it was more than just three times,
22 but three that you showed on the record.

23 Q. Okay. So let's go to your deposition testimony. And
24 before we go there, I want to make sure I have your answer
25 clear.

1 Were you told by Ocwen that it was not giving any
2 information to the credit bureaus that you were late in the
3 months of June, July, October, and December of 2013?

4 A. They were telling me I was current.

5 Q. Okay. And you don't have any evidence to show that
6 Ocwen was giving anybody information that you were late in
7 those months; right?

8 A. They were telling me I was current and I was telling
9 them it was still coming up on their account that I was
10 late.

11 Q. And you can't point to any documents or any evidence
12 that shows Ocwen was furnishing data to any of the credit
13 bureaus that you were late in those months?

14 A. No, I can't show that.

15 Q. Did, did Ocwen inform you that the issues with you
16 being reported as late by Equifax in 2013 were the result of
17 something Equifax was doing?

18 A. They were blaming them from the start. They, they --
19 and even when I would ask them to fix it, they would not
20 help at all.

21 Q. Okay. Well, when you say that Ocwen wouldn't help at
22 all, you'd agree they wrote you back; right?

23 A. Well, a letter telling me that, that they investigated
24 it doesn't help me any. The only thing that's going to help
25 me is if they'd actually correct the record that's being

1 shown on the credit report.

2 Q. All right. Let's, let's -- I'll put this up if you
3 need it. But do you recall the Plaintiff's Exhibit 5, the
4 CFPB letter in which Ocwen says, "We have reported to all
5 four credit agencies your current balance"?

6 A. Yes, I remember that.

7 Q. So they also went on to say Ocwen is unable to control
8 when the credit reporting agencies will update their
9 records; right?

10 A. I understand that. When it's their line item, you
11 would think they'd want to go back and have it fixed,
12 especially when it's affecting somebody like they were doing
13 me.

14 Q. But do you have any understanding that Ocwen doesn't
15 control these other companies and what they're reporting?

16 A. Repeat that.

17 Q. Do you have any understanding that Ocwen, my client,
18 the furnisher that is responsible for your mortgage loan,
19 doesn't control what any other business says about your
20 loan? It can only give accurate data about your loan.
21 Right?

22 A. That's what they might say.

23 Q. Do you understand that?

24 A. I, I understand.

25 Q. And you'd agree with that. We can't control other

1 companies.

2 A. I don't believe that. That I don't agree with. I
3 think that if that's your line item, your company and your
4 company's being, is saying -- or they may not be saying but
5 it's actually being reported your company is saying I'm late
6 all them days, I think it's your responsibility to make sure
7 it's fixed.

8 Q. But you've just told me that Ocwen never said you were
9 late in those months.

10 A. They told me that over the phone. But at the same
11 time, I'm telling them, yes, they are reporting me. I am
12 being reported late on the report.

13 Q. But the information that Ocwen had given wasn't wrong;
14 right?

15 A. I, I don't know that for a fact.

16 Q. Okay. Thank you.

17 THE COURT: Counsel, how much longer on your
18 cross? That's not to rush you. I just want to know.

19 MR. MANNING: Quite a bit, Judge.

20 THE COURT: All right. Then I want to recess for
21 the evening. We'll pick up in the morning as you move to
22 another area. Is that agreeable?

23 MR. MANNING: Yeah. I'm just about to change
24 subjects, but I -- it's going to be a while.

25 THE COURT: And that's what I'm saying. As you

1 move to another area, this is a good time to recess for the
2 evening.

3 MR. MANNING: Absolutely.

4 THE COURT: Ladies and gentlemen, I'm going to
5 recess you for the evening. While you're out, do not
6 discuss this case among yourselves or permit anyone to
7 discuss it with you or in your presence. Do not listen to,
8 view, or read any media coverage that there might be of the
9 trial. Have a good restful evening and I'll see you all at
10 9:00 tomorrow morning.

11 We'll stand in recess.

12 (Trial recessed at 5:00 p.m.)
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1 I, Lisa A. Cook, Official Reporter of the United
2 States District Court for the Southern District of West
3 Virginia, do hereby certify that the foregoing is a true and
4 correct transcript, to the best of my ability, from the
5 record of proceedings in the above-entitled matter.

6
7
8 s\Lisa A. Cook

June 5, 2016

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